NOTES

ON THE

LAW OF CONFESSION

BY

S. ROY

OF LINCOLN'S INN, BAR-AT-LAW; ADVOCATE, HIGH COURT, CALCUTTA; TAGORE LAW PROFESSOR FOR 1908; AUTHOR OF THE "LAW OF SANCTION TO PROSECUTE;" "CUSTOMS AND CUSTOMARY LAW IN BRITISH INDIA."

Third Edition

HARE PRESS:—CALCUTTA

1909

PRINTED BY R. DUTT
HARE PRESS
46, BECHU CHATTERJEE STREET, CALCUTTA

PUBLISHED BY THE AUTHOR

PREFACE TO THE THIRD EDITION.

The Second Edition having now become exhausted, the Author ventures to publish a Third Edition, and hopes that it will be equally well received, as were the last two editions. The present edition contains all the cases of the Indian Law Reports Series, as well as of the various current Journals and Law Reports up to 1908. The cases of the Punjab and Burmah Courts have also been embodied. Thus the work has been thoroughly brought up to date and its utility enhanced.

S. R.

BAR LIBRARY,

Calcutta, March 1st, 1909.

PREFACE TO THE SECOND EDITION.

The welcome that was accorded to the First Edition of this little work by the practitioners of our Law Courts was very cheering indeed, and beyond the most sanguine expectations of the Author. He little thought that the First Edition would be exhausted and a demand for a second be made so soon. The Author regrets that owing to the shortness of time within which the Second Edition has been called for and also owing to the pressure of other work, he has not been able to fully redeem the promises he made in the last para. of the Preface to the First Edition. The learned practitioners will, however, find that the book has been brought *up to date*, and that a large amount of new matter has been introduced, especially a new Chapter on the *Evidentiary value of Confession.* The noting of the names of cases in the text is a new feature of this Edition, and a separate table of cases cited is another. Appendix I containing names of cases has been in consequence omitted. The Index has been made fuller and more copious for easier reference.

S. R.

BAR LIBRARY,

Calcutta, December 1st,

PREFACE TO THE FIRST EDITION.

The subject-matter of this Book was published in serial form in the *Calcutta Weekly Notes*, Vol. VI, from No. 30 to No. 45. The object of reprinting it is to place before the Profession the whole subject in a handy and concise form. In his article on "Confession" which was originally a collection of notes for his own use, the author was obliged to put as briefly as was consistent with the nature and size of a magazine article, the whole law—substantive and adjective—on the subject of Confession, which is one of the most difficult and intricate subjects of the Criminal Law of Procedure and Evidence.

The author does not pretend that this little work is by any means exhaustive on the subject. When he was tempted to publish his article in the *Calcutta Weekly Notes* he had no idea of subsequently bringing it out in the form of a book until it was suggested to him by some of his friends. The present publication is, with the exception of a slight alteration in the first instalment, a *verbatim* reprint of the original article: and hence the book retains its inherent defect of not being full and comprehensive. In fact, for want of space, the author had to be content with only giving the reference of cases by the number, name, and page of their respective volumes and to omit their names which will, however, now be found in Appendix I.

For easy reference the full texts of the various sections of the Evidence Act and of the Code of Criminal Procedure, bearing on the subject and mentioned in this book, have been reproduced at the end in Appendix II.

All the recent cases *up to date* have been noted herein.

In conclusion the author hopes that if this little book proves of any use to the legal practitioners in general, he will endeavour to make it fuller and more comprehensive in the next edition.

S. R.

Bar Library,

Calcutta, November 1st, 1902.

CONTENTS.

	Page.
Introduction	1
Evidentiary value of confession	9
Various sections bearing upon the law of confession	22
Recording of statement or confession ...	25
Inducement, threat or promise	36
Examination of the accused	43
Confessions to police-officers	48
Confession to Magistrate	57
Confession of prisoners tried jointly... ...	60
Accomplice	66
Distinction between a spy and an accomplice ...	76
Approvers	81
Retracted confession	88
Sec. 288, Cr. P. C.	92
Discovery resulting from inadmissible confession	93
Sec. 533, Cr. P. C.	97
Dying declarations	99
Appendix :—	
Indian Evidence Act	111
Criminal Procedure Code ...	116
Index	123

TABLE OF CASES CITED.

A

	Page.
Abdulla, 7 All. 385 (F. B.) ...	105
Acchabba Beori, 3 M. L. T. 263 ...	51
Adu Shikdar, 11 Cal. 635	55, 93, 94, 95, 97
Akhoy Kumar Chakrabutty, 4 C. W. N. 755	79
Alagu Kone, 16 Mad. 421	26
Alimudin, 23 Cal. 361	79
Alladad, 9 P. R. 1906 (Cr.) s. c. 4 Cr. L. J. 282	85
Amanullah, 12 B. L. R. App. 15 : s. c. 21 W. R. Cr. 49	88
Ambigara Halagu, 1 Mad. 163 ...	62, 64
Amir Khan, 7 C. W. N. 457 ...	84
Amrita Govinda, 10 Bom. H. C. R. 497	53
Anant Narayan, 6 Bom. L. R. 94 ...	46
Anantram Singh, 5 Cal. 954 (F. B.) ...	30, 58
Anga Valayan, 22 Mad. 15	29, 31, 32, 58, 98
Anta, 1 All. W. N. (1892) 60 ...	97
Asan Mullick, 2 C. W. N. 672 ...	69, 78, 79
Asghar Ali, 2 All. 260	36, 39, 41
Asutosh Chuckerbutty, 4 Cal. 483 (F. B.)	62, 64, 70

B

Ba Tin, 3 L. B. R. 199 s. c. 4 Cr. L. J. 205	28
Babu Lal, 6 All. 509 (F. B.)	3, 56, 93, 94, 95, 96, 97
Badi, 7 Mad. 579	64
Bahadur, 59 P. R. 1905 (Cr.) ...	87
Bahubal Sarkar, 10 C. W. N. 287 ...	50
Bai Ratan, 10 Bom. H. C. R. 166 ...	31
Baijoo Chowdhury, 25 W. R. Cr. 43 ...	60, 70
Baji Krishna, 6 Bom. L. R. 481 ...	69

Page.
Bajrangilal, 4 C. W. N. 42 43
Bakur Khan, 5 N. W. P. 213 ... 63
Bala Patil, 5 Bom. 63 65
Balapa *bin* Dasappa, Bom. H. C. R., Dec. 3, 1898 91
Balavant *v.* Pendharkur, 11 Bom. H. C. R. 137 ... ... 38, 41, 42, 70, 89
Baldeo, 8 All. 509 81
Banu Singh, 10 C. W. N. 962 : s. c. 33 Cal. 1353 ... ... 74, 84, 85, 86
Basanta Ghattack, 26 Cal. 49 ... 45
Basora, A. W. N. (1906) 75, s. c. 3 Cr. L. J. 324 40
Basvanta, 25 Bom. 168 89
Bawar, 10 O. C. 112 : s. c. 6. Cr. L. J. 94 30
Bayaji Kom Andu, 14 Ind. Jur. N. S. 384 61
Behari Lal Bose, 6 C. L. R. 431 ... 45
Behary Singh & ors., 7 W. R. Cr. 3 ... 18, 38
Belat Ali, 10 B. L. R. 453 60
Bhagi Vedu, 8 Bom. L. R. 697 : s.c. 4 Cr. L. J. 332 ... ... 4, 89
Bhairon Singh, 3 All. 338 ... ... 29, 58
Bhairub Ch. Chuckerbutty, 2 C. W. N. 702 ... ... 3, 22, 25, 26, 31 59, 98
Bharmappa, 12 Mad. 123 ... 88, 92
Bhau, 13 Bom .493 82
Bhawani, 1 All. 664 64
Bhikaree, 15 W. R. Cr. 63 29
Bhima, 17 Bom. 485 49
Bhola, 8 P. R. 1907 (Cr.) : s c. 33 P. W. R. 1907 : 6 Cr. L. J. 337 : 46 P. L. R. 1908 27
Bhuttun Rujwan, 12 W. R. Cr. 49 ... 7, 89
Bipin Behari Dey, 2 C. W. N. 71 ... 49, 50
Bipin Biswas, 10 Cal. 970 ... ... 81, 82
Bipin Manjhi & ors., 3 C. W. N. ciii ... 98
Bishan Dutt, 2 A. L. J. 53 : s. c. 2 Cr. L. J. 22 ... ... 4, 54

	Page.
Bishnu Banwar, 1 C. W. N. 55 ...	65
Bishoo Manjee, 9 W. R. Cr. 16 ...	39, 55
Bissorunjan Mukerjee, 6 W. R. Cr. 75 ...	104, 106
Brij Narain Man, 20 All. 529 ...	85
Budhan, 29 All. 24	85
Budhu Nanku, 1 Bom. 475	62, 64, 70, 81
Bunwaree Lall, 21 W. R. Cr. 53 ...	65
Buta, P. R. 2 (1886)	105
Bykunt Nath Banerjee, 10 W. R. Cr. 17	81

C

Chagan Dayaram, 14 Bom. 331 ...	71. 78, 79
Chandan, 3 P. W. R. 1907 Cr. ...	88, 96
Chando Chandalini, 24 W. R. Cr. 55 ...	76, 79
Chandra Nath Sirkar, 7 Cal. 65 ...	65
Chena Nashya, 2 C. W. N. 257 : s. c. 25 Cal. 413	93, 96
Chet Singh, 28 P. W. R. 1907, Cr. ...	88
Chinibash Ghosh, 1 C. L. R. 436 ...	45, 47
Chinna Pavuchi, 23 Mad. 151 ...	60, 83
Chinna Venkada, Wier 800 ...	27
Chintamonee Nye, 12 W. R. Cr. 2 ...	104
Chirag Ali, 12 W. R. Cr. 5 ...	81
Choda Atchenah, 3 Mad. H. C. R. 318	24, 96
Chokoo Khan, 5 W. R. Cr. 70 ...	4
Chumman Shah, 3 Cal. 756 ...	25
Chunder Bhuttacharjee, 24 W. R. Cr. 42	61, 64
Chutturdharee Singh, 5 W. R. Cr. 59 ...	69
Commer Sahib, 12 Mad. 153 ...	9

D

Dabee Pershad, 7 C. L. R. 541 : s. c. 6 Cal. 530	3
Dada Ana, 15 Bom. 452	
Daji Narsu, 6 Bom. 288	29, 61
Dammar, 22 All. 448 n.	62

Page.

Degumber Thakur, 19 W. R. Cr. 44 : s.c. 6 C. L. R. 278 104
Deodhur Singh, 27 Cal. 144 79
Deonandan Pershad Singh, 10 C. W. N. 669 : s.c. 33 Cal. 640 ... . 68, 78
Dhunraj Singh *v.* Peetambur Das, 5 W. R. Cr. 5 21
Dhurum Dutt Ojha, 8 W. R. Cr. 13 ... 41, 42, 55
Diaz, 3 Bom. H. C. R. 51 47
Domun Kahar, 12 W. R. Cr. 82 ... 23, 28, 58
Dosa Jiva, 10 Bom, 231 ... ... 61, 62
Doulat Kunjra, 6 C. W. N. 921 ... 106
Durant, 23 Bom. 213 45
Durbaroo Das Sirdar, 13 W. R. Cr. 14 ... 63
Dwarka, 5 W. R. Cr. 18 70
Dwarka and Sookh Lall, 1 Ind. Jur. N. S. 100 70

E

Elahi Bux, B. L. R. Sup. Vol. 459 (F.B.) s. c. 5 W. R. Cr. 80 ... ... 69, 75, 82
Empress *v.* Raghu Mabadu, Bom. H. C., March 14, 1898 97

F

Farid, 111 P. L. R. 1906 : s. c. 4 Cr. L. J. 177 : s. c. 16 P. R. 1906 (or) ... 53
Fata Adaji, 11 Bom. H. C. R. 247 ... 102, 104
Fateh, 5 All. 217 93
Fattehchand Vastachand, 5 Bom. H. C. R. 85 74
Fekoo Mahto, 14 Cal. 539 ... ... 29, 58, 59

G

Gangia, 23 Bom. 316 ... ... 7, 89
Ganraj, 2 All. 444 ... ... 60, 61
Ganu, 6 Bom. H. C. R. 57 71

Page.

Ganu Bapu, 2 Bom. H. C. R. 398 ... 57
Ganu Somba, 12 Bom. 440 7
Garbad Bechar, 9 Bom. H. C. R. 344 ... 90
Gaung Gyi, 4 L. B. R. 244 ... ... 45, 47, 54
Genu *bin* Mathaji, Bom. H. C., February 27, 1896 91
Gharya, 19 Bom. 728 ... ... 7, 89
Gobardhan, 9 All. 528 (F. B.) ... 71
Golak Ch. Chowdhry, 25 W. R. Cr. 15 4
Gopal Das, 3 Mad. 271 (F.B) ... 7
Gopal Singh, 19 P. W. R. 1907 (Cr.) s. c. 6 Cr. L. J. 260 92
Gopeenath Kolu, 13 W. R. Cr. 69 ... 8
Gorachand Ghosh, 3 B. L. R. 2n. (F.B.): s. c. 11 W. R. C. 19 69
Goshto Lal Dutt, 15 W. R. Cr. 68: s. c. 7 B. L. R. App. 62 47
Gya Singh, 5 C. W. N. 864 ... ... 32, 45

H

Hakiman, 51 P. L. R. 1905: s. c. 2 Cr. L. J. 230 ... ... 3, 51
Hanmanta, 1 Bom. 610 39
Hanmant Vasudeo Mulgund, 6 Bom. L. R. 443 68
Harbans, 8 O. C. 395 (B) 8
Haris Ch. Telcherkar 10 Bom. L. R. 201 44
Hardeo Dass, All. W. N. (1884) 286 ... 71
Hargobind Singh, 14 All. 242 ... 44
Haribole Chunder Ghosh, 1 Cal. 207 (F. B.) 24, 49
Hawthorne, 13 All. 345 ... ... 44, 45, 46
Hicks, 10 B. L. R. App. 1 ... ... 36, 41
Hiran Miya, 1 C. L. R. 21 ... ... 53, 55
Hossein Buksh Sheik, 6 Cal. 96: s. c. 6 C. L. R. 521 ... ... 44, 45, 46
Hossein Haji, 25 Bom. 422 74
Hurry Ch. Chuckerbutty, 10 Cal. 140: s. c. 13 C. L. R. 358 ... ... 44, 45, 46

Page.

I

Imam *Valad* Baban, 3 Bom. H. C. R. 571 ... ... 70. 72
Imdad Khan, 8 All. 120 69
Indra Chunder Pal, 2 C. W. N. 637 ... 49, 50
Ishan Chandra Chundra, 21 Cal. 328 ... 78, 79
Issen Mundle, 3 W. R. Cr. 8 ... 81

J.

Jadab Das, 27 Cal. 295 : s.c. 4 C. W. N. 129 8, 23, 31, 51, 56, 66, 88, 91, 92
Jafar, 140 P.L.R. 1905 88
Jaffir Ali, 19 W, R. Cr. 57 62,64,
Jagat Chunder Mali, 22 Cal. 50, 4, 39, 49, 60,82,83,93
Jagrup, 7 All. 646 61
Jai Narayan Rai, 17 Cal. 862 ... 29, 31, 98
Jamiruddi Masali, 6 C. W. N. 553 ... 63,84
Jan Mahomed, 1 W. R. Cr. 49 ... 79
Jasha Bewa, 11 C.W.N. 904 55
Jatindra Nath Chatterjee, 11 C. W. N. 666 ... 120
Javecharam, 19 Bom. 363 52,76
Jema, 8 W. R. Cr. 40 58,90
Jetoo, 23 W. R. Cr. 16 30
Jogendra Bhawmik, 2 C. W. N. 55 73, 79, 80
Jora Hasji, 11 Bom. H. C. R. 242 ... 95, 96
Joyuddee Paramanick, K 7 C. L. R. 66 ... 82, 93

K

Kachali Hari, 18 Cal. 129 35
Kadu, 176 P. L. R. 1905 88
Kaka Singh, 155 P. L. R. 1908 ... 54
Kala Chand Das, 11 W. R. Cr 21 ... 72
Kalai, 4 C. W. N. 252 : s. c. 27 Cal. 366 ... 50
Kali Singh, 7 C. L. J. 246 32
Kalika Misser, 1 Agra H. C. R. 3 ... 104
Kally Churn Ganguli, 21 W. R. Cr. 11 ... 21
Kally Churn Lohar, 6 W. R. Cr. 84 ... 7,9

Page.
Kaloop, 12 P. W. R. 1907 s.c. 5 Cr. L. J. 437 41, 70
Kalu Patel, 11 Bom. H. C. R. 146 ... 60
Kamalia, 10 Bom. 595 ... 24 ... 93,95
Kamla Prasad, 5 C. W. N. 517 ... 72,79
Karim Buksh, 2 All. 386 74
Karoo, 6 W. R. Cr. 44 70
Karuna Boistabi, 22 Cal. 164 65,88
Kashi Nath Dinkar, 8 Bom. H. C. R. 126 ... 42
Kathia *Valad* Navalya Bhil 30 Bom. 611 s. c. 8 Bom. L. R. 740 85
Kazi, 6 Cal. 279 61
Kehri, 29 All. 434 s. c. 4 A. L. J. 310 : A. W. N. (1907) 140 : 5 Cr. L. J. 360 ... 92
Keshub Bhoonia, 25 W. R. Cr. 8 ... 60
Keta Boisnovi, 2 C. W. N. clxxx ... 49
Khandia *bin* Pandu, 15 Bom. 66 ...61,62,64
Khiar Din. 21 P. W. R. 1907 (Cr.) s. c. 6 Cr. L. J. 266 21,35
Khuda Baksh, 11 P. L. R. 1905 ... 33,54
Khukree Ooram, 21 W. R. Cr. 48 ... 65
Khyroolah, 6 W. R. Cr. 21 (F. B.) : s. c. B. L. R. Sup. Vol. App. II ... 1,104
Kisto Mundle, 7 W. R. Cr. ... 41
Koa, 19 W. R. Cr. 48 71
Kodai Kahar, 5 W. R. Cr. 6 ... 8
Koonjo Leith, 20 W. R. Cr. 1 ... 62
Krishna Bhat, 10 Bom. 319 ... 57,61,70,72

L

Lakshman Bala, 6 Bom. 124 65
Lakshmayya Pandiam, 12 Mad. 491 ... 60,83
Lalchand, 18 Cal. 549 30
Lal Sheikh, 3 C. W. N. 387 25,28,58
Latif Khan, 20 Bom. 394 21
Lester, 20 Bom. 165 51
Luchmee Pershad, 19 W. R. Cr. 43 ... 68
Luchoo, 5 N. W. P. 86

Page.

M

Macdonald, J., 10 B. L. R. App. 2 ... 3,56
Madar and anr., All. W. N. (1885) 59 ...38,43,91
Madar Saheb, Wier 822 28
Maganlal, 14 Bom. 115 71,79,80
Mahabir, 18 All. 78 88,89
Mahamad Buksh Karim Buksh, 8 Bom. L. R. 507 37
Mahesh Biswas, 19 W. R. Cr. 16 : s. c. 10 B. L. R. 455 n. ... 60,62,72,76,81
Mahima Ch. Dass, 15 W. R. Cr. 37 ... 82
Maiku Lal, 20 All. 133 7,89,90
Malapa *bin* Kapana, 11 Bom. H. C. R. 196 62
Malhar Martand Kulkarni, 26 Bom. 193 72,75,78
Malinja, 3 M. L. T. 2 5 48
Malka, 2 Bom. 643 26
Malu, 2 All. 646 60,61
Manchi, Bom. H. C., Nov. 24, 1892 ... 43
Manik Sarkar, 24 Cal. 492 82
Manki Tewari, 2 C. W. N. 749 ... 64,74
Mannoo Tamoolee, 4 Cal. 696 ... 28,31
Mathews, 10 Cal. 1022 53,56
Mathura Thakur, 6 C. W. N. 72 ... 106
Meher Ali Mullik, 15 Cal. 589 ... 55,56
Moher Sheikh, 21 Cal. 392 7
Mohideen Abdul Kadir, 27 Mad. 238 ... 45
Mohiuddin Sahib, 25 Mad. 143 ... 75,83
Mohun Lal, 4 All. 46 37,55
Mona Puna, 16 Bom. 661 ... ... 45, 76
Mongola, 6 W. R. Cr. 81 89
Moonsai Bibee, 24 W. R. Cr. 54 ... 30, 48
Moti Kurmi, 13 C. L. R. 275 ... 65
Motijan Bibee, 6 C. W. N. 380 ... 90
Mulna, 14 All. 502 82
Mungar Bhooyan, 10 W. R. Cr. 56 ... 8
Munshi Sheikh, 8 Cal. 616... ... 29, 59

Page.

N

Nabadip Gossami, 15 W. R. Cr. 71 : s. c. 1 B. L. R. O. C. R. 15 ... ... 40, 56
Nabi Baksh, 2 C. W. N. 347 ... 70
Naga, 23 W. R. Cr. 24 ... ... 61, 65
Nagena Ourut, 3 W. R. Cr. 6 ... 21
Nagla Kala, 22 Bom. 235 ... 27, 35, 52, 59
Nana, 14 Bom. 260 (F. B.) 3, 51, 53, 93, 95, 96, 97
Narayan, 25 Bom. 543 32
Narayan, Bom. H. C., Nov. 2, 1893 ... 47
Narayan Raghunath Patki, 32 Bom. 111 s. c. 9 Bom. L. R. 789 77
Nanha Malla, 13 C. L. R. 326 ... 82, 93
Navroji Dadabhai, 9 Bom. H. C. R. 358, 36, 39, 40, 48
Nawab Jan, 8 W. R. Cr. 19 ... 81, 82
Nazim, 5 C. W. N. 670 ... ...45, 74, 88, 89
Nazir Jharudar, 9 C. W. N. 474 ... 22, 50, 55
Nga Po Huan, 4 U. B. R. Cr. Proc. 7 ... 82, 86
Nga Po Yin, U. B. R. (1906) Evi. 3 s c. 5 Cr. L. J. 300 67
Nga Shwe Sin, 34 B. R. 213 s. c. 4 Cr. L. J. 385 27
Nikunja Behari Roy, 5 C. W. N. 294 ... 66
Nilmadhub Mitter, 15 Cal 595 (F. B.) 3, 24, 29, 31
Nirmal Das, 22 All. 445 62
Nobin Krishna Mukerjee, 10 Cal. 1047... 104
Noor Bux Kazi, 6 Cal. 279... ... 61
Nunhoo, 9 W. R. Cr. 28 81
Nur Mahomed, 8 Bom. 223 ... 61, 71
Nuri Sheikh, 6 C. W. N. 596 ... 32
Nussuruddin, 21 W. R. Cr. 5 ... 35

O

Obhoy Ch. Chuckerbutty, 3 W. R. Cr. 19 77
O'Hara, 17 Cal. 642 (F. B.) 70, 79, 80

Page.

P

Panchu Das, 34 Cal. 698 102
Paban Sing, 10 C. W. N. 847 ... 84
Pagaree Shaha, 19 W. R. Cr. 51 ... 55, 96
Pahuji, 19 Bom. 195 ... ... 60, 83
Paltua, 13 All. 53 83
Pancham, 4 All. 198 ... 55, 94, 95, 96
Pandharinath, 6 Bom. 34 ... ... 3, 53, 56
Pavadi *bin* Bassappa, 2 Bom. H. C. R. 397 57
Pestonji Dinsha, 10 Bom. H. C. R. 75 70
Pirbhu, 17 All. 524 ... ... 60, 83
Pitamber Jina, 2 Bom. 61 ... ... 45, 53, 56
Po Sin, 3 B. L. R. 283 s. c. 5 Cr. L. J. 421 49
Prabhu, 17 P. W. R. 1907 (Cr.) s. C. 6 Cr. L. J. 141 ... ... 21, 60, 61

Q

Q *v.* Behari Singh and ors. 7 W. R Cr. 3 18, 38
„ Hicks, 20 B. L. R. App. 1 ... 36, 41
„ Thompson, 2 Q. B. 12 (1893) ... 88

R

Radhanath Dosad, 8 W. R. Cr. 53 ... 39, 41
Radhe Halwai, 7 C. W. N. 220 ... 33, 34, 55
Raghu, 23 Bom, 221 ... ... 29, 31, 98
Raghu Mabadu, Bom. H. C., Mar. 14, 1898 97
Raghunath Patki, 32 Bom. 111 : s. c. 9 Bom. L. R. 789 57
Rajani Kanta Koer, 8 C. W. N. 22 25, 26, 48, 95, 99
Raju Ahilaji, 9 Bom. L. R. ... 44
Rama Birapa, 3 Bom. 12 ... 36, 39, 41, 49, 65, 93, 95, 96
Rama Tevan, 15 Mad. 352 ... 82, 83

	Page.
Raman, 21 Mad. 83	7, 89
Ramanand, All. W. N. (1885) 221 ...	43
Ramasami Padayachi, 1 Mad. 394 ...	71
Ramaswami Gounden, 27 Mad. 271 ...	77
Ram Chand, 1 All. 675	64
Ram Churn Chamar, 4 W. R. Cr. 10 ...	47, 58
Ram Churn Chung, 24 W. R. Cr. 36 ...	96
Ram Dhun Singh, 1 W. R. Cr. 24 ...36, 39, 41, 57	
Ram Sagor, 3 W. R. Cr. 57 ...	81
Ram Saran, 8 All. 306 ... ...62, 68, 69, 70, 71, 72, 81	
Ramsodoy Chuckerbutty, 20 W. R. Cr. 19	74
Rangi, 10 Mad. 295	59, 88, 92
Ranjeet Sontal, 6 W. R. Cr. 73 ...	7
Raru Nayar, 19 Mad. 482	88
Rasak, Bom. H. C., Oct., 2, 892 ...	43
Rayappan, Wier 820	28
Razai Mia, 22 Cal. 817	30, 98
Reaz Ali, 6 W. R. Cr. 77	81
Rezza Hossein, 8 W. R. Cr. 55 ...	29
Rojoni Kant Bhoomick, 13 W. R. Cr. 24	82
Rudra, 25 Bom. 45	107

S

Sadhu Mundul, 21 W. R. Cr. 69 ...	62, 65, 70
Safiruddin, 2 C. L. R. 132	58, 88
Sagambur, 12 C. L. R. 120 ...	29
Sagol Samba Sujao, 21 Cal. 642 ...	30, 44, 46
Salemuddin Sheik, 26 Cal. 569: s c. 3 C. W. N. 393	49
Sama Papi, 7 Mad. 287	51, 56, 59
Samiruddin, 8 Cal. 211: s. c. 10 C. L. R. 11	102, 106
Sankappa Ray, 18 M. L. J. 60 ...	57, 63, 93
Sat Narain Tewari, 10 C. W. N. 517 : s. c. 32 Cal. 1085	35
Savatya Atma Pastya, 9 Bom. L. R. 356...	44

Page.

Shama Sunker Biswas, 1 B. L. R. (s. n. 16 : s. c. 10 W. R. Cr. 25 ... 46, 47
Sheikh Boodhoo, 8 W. R. Cr. 38 ... 4
Sheikh Buxoo, 21 W. R. Cr. 65 ... 60
Sheikh Meher Chand, 13 W. R. Cr. 63... 48
Sheikh Tinoo, 15 W. R. Cr. 11 ... 104
Shivya, 1 Bom. 219 35
Sirsapa, 4 Bom. 15 29
Smither, 26 Mad. 1 ... ... 72, 81
Sodananda Pal, 32 Cal 550 28
Sonaoollah, 25 W. R. Cr. 23 ... 4
Sourendra Nath Mitra, 10 C. W. N. 153 66
Soyamber Singh, 9 W. R. Cr. 2 ... 103
Srinivas Krishna, 7 Bom. L. R. 969 ... 73
Sri Ram, 2 A. L. J. 100 s. c. 2 Cr. L. J. 59 4, 33
Suba, 153 P L.R. 1905 : s. c. 41 P.R. 1905 (Cr.) 87
Sudra, 14 All. 336 82
Sunder Singh, 12 All. 595 ... ...27, 35, 52, 59

T

Taju Pramanick, 25 Cal. 711 ... 8, 65
Tarinee Churn Chuttopadhya, 7 W.R. Cr. 3 18
Tatya *bin* Appaji, 20 Bom. 795 ... 50, 52
Thakuria, 7 C. P. 14 105
Thandraya Mudaly, 26 Mad. 38 ... 36
Thein Maung, 4 Cr. L. J. 198 s. c. 3 L. B. R. 173 27
Titu Maya, 8 Cal. 618 n. (F. B.) : s. c. 1. C. L. R. 436 ... ... 29, 46, 59
Tribhovan Manickchand, 9 Bom. 131 ... 53
Tulsi Dosad, 3 B. L. R. A. C. R. 66 ... 81

U

Udhan Bind, 19 W. R. Cr. 68 .. 68
Ujrail, 3 N. W. P. 212 104
Umi, 6 Bom. 126 77
Upendra Kumar Ghose, 12 C. W.N. 140 68, 75
Uzeer, 10 Cal. 775 ... ... 36, 40

Page.

V

Vahala Jetha, 7 Bom. H. C. R. 56 ... 58
Venkatasami, 7 Mad. 102 60
Virabudra Gaud, 1 Mad. H. C. R. 199 ... 45
Viram, 9 Mad. 224 22, 25, 29, 31, 34, 45, 46, 98
Visram Babaji, 21 Bom. 495 ... 31, 98

W

Wafdar Khan, 21 Cal. 955 4

X

Y

Yakub Khan, 5 All. 253 ... ... 29, 45
Yellaraddi, 6 Bom L. R. 773 ... 22

Z

Zuhir, 10 W. R. Cr. 11 103

ANONYMOUS CASES.

4 Mad. H. C. R. App. 7 Proc. March 20, 1868 70
4 Mad. H. C. R. 22 Proc. March 31, 1868 82
5 Mad. H. C. R. App. IV Proc. Novem. 11, 1869 ... ...
7 Mad. H. C. R. App. 15 Proc. Jany. 24, 1873 ... ... 61, 64
Bom. H. C. Cr. Rulings, Apl. 25, 1889 89
Bom. H. C. March 4, 1897 ... 92
Bom. H. C. 17 Feby., 1898 ... 8

ENGLISH CASES.

	Page.
——3 Leigh R. 797	108
Case of the Essex Witches 6 How. St. Tr. 647	17
Case of the Devon Witches 8 How. St. Tr. 1017	17
Callaghan, M'Nally, Evi. 385 Rosc., Cr. Evi. 33	109
Clarke, 2 F. and F. 2	109
Dingler, 2 Leach 561	109
Drummond, 1 Leach, C. C. 338 ...	108
Fagent, 7 C. and P. 238	109
Hall's case (*See* Lamb's case) ...	5
Haney *v.* Comm. 5 Cr. Law Mag. 47 ...	100
Hevey's case, 1 Leach 232	5
Hubert's case, 6 How. St. Tr. 807, 808, 809, 821	16
Gay, 7 C. and P. 230	106
Lamb's case, 2 Leach 559	5, 11
Leach v. Simpson, 1 Law and Eq. Rep. 58	106
Mary Smiths' case, 2 How. St. Tr. 1049 ...	17
Mitchell, 17 Cox. C. C. 303	108, 109
Ms. case cited, 1 Leach 264 N. ...	12
Perkins, 2 Moo. C. C. R. 135 : s. c. 9 C. & P. 395	109
Perry's case, 14 St. Tr. 1312	17
Pike, 3 C & P. 598	104, 109
Reason, 1 St. 499	109
R. *v.* Baleman, 4 F. & F. 1068 ...	6
,, Cass, 1 Lea 293 N.	40
,, Colmer, 9 Cox. C. C. 506 ...	6
,, Cooper, (1833) ...	37
,, Coote, 42 L. J. Priv. C. Cas. 45 ...	5, 6

		Page.
R. *v.*	Court, 7 C. and P. 486 ...	39
,,	Croydon, 2 Cox. 67 ...	36
,,	Drew, 8 C. and P. 140 ...	36, 37, 38
,,	Eldridge, R. and R., C. C. R. 440 ...	9, 13
,,	Ellis, Ry. and M. 432 ...	48
,,	Enoch (1833) ...	37
,,	Falkner, R. and R., C C. R. 481 ...	9, 13
,,	Farler, 8 C. and P. 106 ...	72
,,	Fisher, 1 Leach 286	13
,,	Fitzerald, 1841 (Ir.)	109
,,	Garbett, 1 Den C. C. 236 ...	6
,,	Garner, (1848) 2 C. and K. 920 ...	37, 39
,,	Gillis, 11 Cox. C. C. 69 ...	5
,,	Githam, R. and M. 186 ...	39
,,	Goldshede, 1 C. and K. 657 ...	6
,,	Griffiths, 3 Russ. 493	42
,,	Hasset, 8 Cox. C. C. 338 ...	5
,,	Hearn, 1 Car. and M. 109 ...	38, 40
,,	Hind, 29 I. J. M. C. 147 ...	100
,,	Jarvis, 1 C. C. R. 96 ...	39, 40
,,	Jenkins, R. and R. 492 ...	36
,,	Jones, R. and R. 152	36, 41
,,	Kerr, 8 C. and P. 176	5
,,	Kingston, (1830)	37
,,	Lambe, 2 Leach 554	11
,,	Laughter, (1846)	37, 38
,,	Limgate, 3 Russ. 498	41
,,	Lloyd, 6 C. and P. 393 ...	39
,,	Long, 6 C. and P. 179 ...	40
,,	Luckhurst, (1853) Dears. C. C. 245...	38, 40
,,	Mead, 2 B. and C. 605 ...	100
,,	Mills, (1833)	37
,,	Moore, 2 Den. C. and C. 522 ...	36
,,	Morton, (1843)	37
,,	Mullins, 3 Cox. C. C. 527 ...	76
,,	Parker, (1851)	38
,,	Pike, 3 C. and P. 598	108
,,	Pountney, (1836)	38
,,	Reason, 12 Cox. 228	40

	Page.
R. *v.* Reeve, 1 C. C. R. 362	39
„ Richards, 5 C. and P. 318 ...	40
„ Scaife, 1 Mo. and Rob. 551 ...	100, 109
„ Sellers, Carr. C. L. 233 ...	100, 108
„ Shepherd, (1836)	37
„ Simons, 6 C. and P. 541 and 542 ...	12
„ Simpson, (1834) (Ir.)	38
„ Sleeman, (1853)	37
„ Stubbs, 1 Dears. C. C. 555 ...	76
„ Swatkins, (1831)	37
„ Taylor, 8 C. and P. 733 ...	36
„ Tinckler, East. P. C. 354 ...	108
„ Thompson, Q. B. (1893) vol. II. 13	4, 37, 88
„ Thornton, 1 Mood C. C. 27 ...	48
„ Upchurch, 1 R. and M. C. C. 465 ...	36, 41
„ Vernon, (1872)	37
„ Walker, 9 C. and P. 161 ...	6
„ Warner, 3 Russ. Cr. 452 N. ...	38
„ Warringham, 2 Den. C. C. 447 N. ...	5, 36
„ Warwickshall, 1 Leach 263 ...	11, 16
„ Webb, 4 C. and P. 564 ...	5
„ Wild, R. and M. 452	39
„ Windsor, (1864)	37
„ Wright, 1 Lew 48	40
Rex. *v.* Ashton, 2 Lewin C. C. 147 ...	109
„ Clewes, 4 C. and P. 221 ...	4
„ Despard, 28 State Trials, 489 ...	76
„ Jones, 2 C. and P. 629 ...	4
„ Tippet, R. and R. 509 ...	13
„ Wilkes, 7 C. and P. 272 ...	75
„ White, R. and R. 508 ...	13
Scaife, 1 Mo. and Rob. 551	109
Smith, 10 Cox. 82	109
Trowter's case, 12 Vin. Abr. 118 ...	106
Wheeling case, 1 Leach 311 N. ...	9
Woodcock, 1 East P. C. 356	109
1 Woodfall's Junius, * 122 and * 123 ...	17

IRISH CASES.

	Page.
An Irish case, 1 Chitty Cr. Law 85 ...	16
R. *v.* Fitzerald, (1841)	109
„ Simpson, (1834)	38

AMERICAN CASES.

Boorn's case	15
Guild's case, (1828) (Am.)	37
Hendrickson *v.* P., 1 Parker C. R. 466 ...	6
P. *v.* Banker, 2 Parker C. R. 26 ...	6
Resp. *v.* Fields, 1822-4 (Am.) ...	10
S. *v.* Youngs, 1 Wisc. 126	6
State, *v.* Johnson, 40 Am. St. R. 405 ...	108
Williams *v.* C., 5 Casey 102	6

law of the country. That law was not abrogated on the occasion of the British Government and for some years afterwards the administration of justice in criminal cases was left to the Nizam. Even after the criminal law was administered by the Courts of the East India Company without reference to the Nizam, the Mahomedan law, as modified by the Regulations and Acts of Government, continued to be the general criminal law of the country." Further on, at p. 24 his Lordship went on saying "the Mahomedan criminal law including the Mahomedan law of evidence is no longer the law of the country. It has been superseded by the Penal Code and the Code of Procedure, Regulation IX of 1793, by which the Mahomedan law, as modified by the Regulations, was established as the general criminal law of the country, and many other regulations bearing upon the same subject, were repealed by Act XVII of 1862. A code of evidence has not yet been passed, and we have no express rule laid down by the Legislature in any existing laws upon the subject now under consideration. By the abolition of the Mahomedan law, the law of England was not established in its place." This judgment was delivered on the 9th July, 1866.

The Draft Bill of the Evidenee Act was first introduced by Mr. Maine, afterwards Sir Henry Maine, the Legal Member of the Council in December, 1868. But this Bill never got beyond the first reading. More than two years after, in April 1871, Mr. Stephen, afterwards Sir James Stephen, the successor of Mr. Maine in the Council, introduced a second Bill, which received the assent of the Governor-General in Council on the 15th March, 1872 and is known as Act I of 1872. And this is the codified law on evidence in India. Evidence Act of India is based on the English law of evidence modified to suit India. And hence, in many respects, differences are noticed between the Indian and the English law upon this subject. In regard to the law of confession,

the difference is very marked on certain points which will be indicated later on in their proper place.

Admissions and *Confessions* are declarations against interest. In English law "the term *admission* is usually applied to *civil transaction*, and to those matters of fact, in criminal cases, which do not involve criminal intent, while the term *confession* is generally used in *criminal law*, and as denoting an *acknowledgment* of guilt:" (Taylor's Evi., p. 472).

By the Indian Evidence Act the term *confession* has not been defined. The term *admission* has been defined by sec. 17 of the same Act. The distinction between *admission* and *confession*, as drawn by the English law, it would apparently seem, has not been adopted in the Indian Evidence Act. But that is not so. The decisions of the High Court distinctly shew that such a distinction has been observed. [Vide *J. Macdonald*, 10 B. L. R. App. 2; *Dabee Pershad*, I. L. R. 6 Cal. 530; *Nilmadhub Mitter*, I. L R. 15 Cal. 595 (F.B.)].

Sir James Stephen in his Digest of the Law of Evidence, in Art. 21, has defined *confession*. This definition has been generally adopted by the Indian Courts [Vide *Babu Lall*, I. L. R. 6 All. 519 (F.B.) at p. 539; *Nana*, I. L. R. 14 Bom. 260 (F.B.) at p. 263]. The definition given by Sir James Stephen in his Digest of the Law of Evidence is as follows:—

"A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime."

It has accordingly been held that an incriminating statement, which falls short of an absolute confession but from which the inference of guilt follows, is a confession within the meaning of the Evidence Act. [*Pandharinath*, I. L. R. 6 Bom. 34; *Nana*, I. L. R. 14 Bom. 260 (F.B.). Followed in *Bhairub Chunder Chuckerbutty*, 2 C. W. N. 702 at p. 707. *Hakiman*, 51 P. L. R. 1905: s. c. 2 Cr. L. J. 230].

So when a man charged with an offence makes a statement in which he admits and explains away something which tells against him that is not a confession but a defence.

Statement made in Court by some of the accused inculpating a co-accused but exculpating themselves is not a confession.—(*Bishan Dutt*, 2 A. L. J. 53 : s. c. 2 Cr. L. J. 22.)

Statement not implicating the deponent is not a confession and inadmissible in evidence—(*Sri Ram*, 2 A. L. J. 100 : s. c. 2 Cr. L. J. 59).

A confession in order to be admissible must be free and voluntary : that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence, because under such circumstances the party may have been influenced to say what is not true, and the supposed confession cannot safely be acted upon.—(3 Russ 478, 479 ; Q. v. *Thompson* Q. B. [1873) Vol., II. p 13 ; *Jagat Chander Mali*, I. L. R. 22 Cal. 50 ; *Bhagi Vedu* 8 Bom. L. R. 697 : s. c. 4 Cr. L. J. 332. See observations of Aston & Beaman J. J.).

The whole of what the prisoner said at the time of making the confession should be taken together. For unless the whole is considered, the true meaning of the part, which is evidence against the prisoner, cannot be ascertained. (*Vide* Taylor's Evidence, § 870 ; 3 Russ 531 ; *Chokoo Khan*, 5 W. R. Cr. 70 ; *Sheikh Boodhoo*, 8 W. R. Cr. 38 ; *Sonaoollah*, 25 W. R. Cr. 23 ; *Wafdar Khan*, I. L. R. 21 Cal. 955). *Rex* v. *Clewes*, 4 C. & P. 221 ; and Short-hand Rep. ; *Rex.* v. *Jones*, 2 C. & P. 629 ; C. C. C. Oct., 1855. (Cited in Will's Cir. Ev.).

If admissions are taken as evidence they must be taken as a whole : (*Golok Ch. Chowdhry*, 25 W. R. Cr. 15). The statement or confession of one prisoner, made in the absence of another prisoner

when not before a Magistrate, is only evidence against himself, and not against another prisoner. (*Hevey's* case, 1 Leach 232).

When a confession is tendered in evidence, the proof that it was made voluntarily lies upon the prosecutor; and if it be left in doubt whether the confession was made in consequence of the inducement, it will be rejected. (*R.* v. *Warringham*, 2 Den. C. C. 447 note. *See* 3 Russ 530).

A confession made by the prisoner with a view and under the hope of being thereby permitted to turn King's evidence is inadmissible. (*Hall's* case, in note to *Lamb's* case, 2 Leach 559). But if such confessing King's evidence, at the trial of his accomplices, refused to give evidence, he would be convicted upon his own confession (See *R.* v. *Gillis*, 11 Cox. C. C. 69; 3 Russ 486).

A confession should not be elicited by questions from a prisoner in custody. Although no doubt confessions elicited by questions put by officers are admissible, still there can be equally little doubt that it is no part of their duty to put questions to prisoner in their custody. (See *Hill's* case, Rosc. Cr. Ev. 45: *R.* v. *Hassett*, 8 Cox. C. C. 338; *R.* v. *Kerr*, 8 C. & P. 176; 3 Russ 510).

If the written examination of a prisoner taken before a committing Magistrate purport to have been taken on oath, it is not admissible. If a prisoner is sworn and examined by a Magistate by mistake, and his deposition is destroyed, and an examination then taken in the regular way, it is admissible. (*R.* v. *Webb*, 4 C. & P. 564).

But a statement upon oath by a person not being a prisoner, and when no suspicion attached to him, the statement not being compulsory, nor made in consequence of any promise of favour, is admissible in evidence against him on a criminal charge. (1 Phill. Ev. 404; *R.* v. *Coote*, 42 L. J. Priv. C. Ca.

45 ; *R.* v. *Colmer*, 9 Cox. C. C. 506 ; *R.* v. *Bateman*, 4 F. & F. 1068 : 3 Russ 514).

An affidavit of a person is admissible against him in both criminal and civil cases : (*R.* v. *Goldshede*, 1 C. & K. 657 ; *R.* v. *Walker*, cited 6 C. & P. 161 ; 3 Russ 518).

A difference of opinon has existed whether the examination of a person upon oath as a witness before a Coroner, be admissible in evidence against such person on his trial. From various decided cases the results seem to be that it is clearly settled that the mere fact of a party having been examined upon oath will not exclude a statement made by him : (See *R.* v. *Coote*, 42 L. J. P. C. 45 ; L. R. 4 P. C. 599 ; 3 Russ 520) It is admissible in America. See *Hendrickson* v. *P.*, 1 Parker C. R. 406 ; *Williams* v. *C.*; 5 Casey, 102 ; *P.* v. *Banker*, 2 Parker C. R. 26 ; *S.* v. *Young*, 1 Wisc 126.

If the witness objects to answer any question, as tending to criminate himself but the Court improperly compels him to answer, it is not admissible against him. (*R.* v. *Garbett*, 1 Den. C. C. 236 ; 3 Russ 520).

Regarding the admissibility and inadmissibility of a confession, the following general principles may be deduced ; A confession is

Inadmissible.	*Admissble.*
(1) If made to a police-officer ; even, if made *in the immediate presence of Maagistrate.*	(1) If made, whilst not in police-custody, to any person other than a police-officer, *i e.*, to a private person.
(2) If made to a private person while in police-custody, and *not* in the immediate presence of a Magistrate.	(2) Whilst in police-custody, made to a private person in the immediate presence of a Magistrate.

Inadmissible.	*Admissible.*
(3) If made under promise, threat or inducement from a person in authority	(3) If made after removal of impression caused by promise, threat or inducement.
	(4) If made under a *deception* or *artifice ;* such as *a promise of secrecy* ; obtained in consequence of deception practised upon the accused ; when accused drunk ; or made in answer to questions which the accused need not have answered ; or when accused not warned that he was not bound to make such confession.

If a person, while in custody as an accused, gives information to the Police as complainant in another case, his statement as such informant cannot be used as evidenee against him : (*Moher Sheikh*, I. L. R. 21 Cal. 392).

Depositions of witnesses given in a counter-case may be used as evidence against them in their trial as accused persons, but such depositions could only be made evidence against persons making them : [*Moher Sheikh*, I. L. R. 21 Cal. 392 ; *Gopal Das*, I.L. R. 3 Mad. 271 (F. B.) ; *Ganu Somba*, I. L. R. 12 Bom. 440].

The confession of an accused person is only evidence against himself ; (*Kally Churn Lohar*, 6 W. R. Cr. 84).

A prisoner can be convicted on his own uncorroborated confession: (*Ranjeet Sontal*, 6 W. R. Cr. 73).

The properly-attested confession before a Magistrate is sufficient for his conviction without corroborative evidence, notwithstanding a subsequent denial before the Sessions Court : (*Bhuttun Rujwun*, 12 W. R. Cr. 49; *Raman*, I. L. R. 21 Mad. 83 ; *Gharya*, I. L. R. 19 Bom. 728; *Maiku Lal*, I. L. R. 20 All. 133 ; *Gangia*, I. L. R. 23 Bom. 316). But

see *Jadab Das*, I. L. R. 27 Cal. 295 : s. c. 4 C. W. N. 129 *contra*.

Statements by some of the accused which do not amount to confessions and which do not in any way incriminate them are not admissible in evidence against any persons other than those making them : (*Taju Pramanik*, I. L. R. 25 Cal. 711).

It is not sufficient that a confession should be voluntarily made. It must be dealt with like any other piece of evidence and acted on only if it is believed to e true.—Bom. H. C., 17th Feb., 1898.

To give wight to confessions of prisoners recorded under s. 149, Cr. P. C. (1861), there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, shewing in whose custody the prisoners were and how far they were quite free agents : (*Kodai Kahar*, 5 W. R. Cr. 6).

The confessions of a prisoner in one case in which he was convicted cannot be used against him in another case unless they are deposed to on oath either by the person who took them down or by some one else who heard them : (*Mungar Bhooyan*, 10 W. R. Cr. 56).

A confession made to a private individual may be evidence against the prisoner, if proved by the person before whom the confession is made : (*Gopeenath Kollu*, 13 W. R. Cr. 69).

A confession of the accused to the residents of the neighbouring villages is admissible in evidence against him.—[*Harbans*, 8 O. C. 395 (B)]

A confession made not to a police-officer, and not improperly obtained as laid down in s. 24, Evi. Act is always admissible against an accused. (*Ibid*).

Any fact discovered in consequeuce of an admissible confession can also be admitted against him. (*Ibid*).

EVIDENTIARY VALUE OF CONFESSION.

Both by the English and Indian law of evidence, a free and voluntary confession of guilt made by a prisoner is admissible in evidence as the highest and most satisfactory proof because it is fairly presumed that no man would make such a confession against himself if the facts confessed were not true.

A confession, if duly made and satisfactorily proved, is sufficient alone to warrant a conviction without any corroborating evidence *aliunde* (*Wheeling's* case, in note, 1 Leach 311; *R.* v. *Eldridge*, R & R., C. C. R. 440; *R.* v. *Falkner*, ibid, 481, and other cases; cited in *3 Russ 478*). See also *Kally Churn Lohar*, 6 W. R. Cr. 84, and other cases. But there is a great danger in regarding confession as *conclusive* evidence against the prisoner, and it is the more so in this country where confessions are *generally* extracted by the Police by unfair and oppressive means. Mr. Taylor (See his Evi. § 862) says "evidence of oral confession of guilt ought to be *received with great caution.*" And why? That eminent author gives the following reasons:—"Not only does considerable danger of mistake arise from the misapprehension or malice of witnesses, the misuse of words, the failure of party to express his own meaning, the infirmity of memory, but the zeal which generally prevails to detect offenders, especially in cases of aggravated guilt, and the strong disposition which is often displayed by persons engaged in pursuit of evidence to magnify slight grounds of suspicion into sufficient proof—together with the character of witnesses, who are sometimes necessarily called in cases of secret and atrocious crime—all tend to impair the value of this kind of evidence, and sometimes lead to its rejection where in civil actions, it would have been received." (Quoted from Greenleaf's Evi., p. 247).

"In addition to these sources of distrust, which are often sufficient to raise a serious doubt whether

the confession given in evidenee was actually made by prisoner in the words, or to the effect, stated by the witnesses there is yet another reason why caution should be employed in receiving and weighing confessions. The statement, though made as deposed to, may be *false*. The prisoner oppressed by the calamity of his situation, may have been induced by motives of hope or fear to make an untrue confession; and the same result may have arisen from a morbid ambition to obtain an infamous notoriety, from an insane or criminal desire to be rid of life, from a reasonable wish to break off old connexions, and to commence a new career, from an almost pardonable anxiety to screen a relative or a comrade, or even from the delusion of an overwrought and fantastic imagination."

Macaulay has remarked—"Words may easily be misunderstood by an honest man. They may easily be msiconstrued by a knave. What was spoken metaphorically may be apprehended literally. What was spoken ludicrously may be apprehended seriously. A particle., a tense, a mood, an emphasis, may make the whole difference between guilt and innocence." (History of England, Vol. I. Ch. 5, p. 583).

In *Resp.* v. *Fields*, 1822-4 (Am.), the Court observed.—"How easy is it for the hearer to take one word for another, or to take a word in a sense not intended by the speaker; and for want of an exact representation of the tone of voice, emphasis, countenance, eye, manner, and action of the one who made the confession how almost impossible is it to make third persons understand the exact state of his mind and meaning! For these reasons such evidence is received with great distrust and under apprehensions for the wrong it may do." Cited in Taylor's Evi., p. 555.

The following is from Roscoe's Digest of the Law of Evidence, p. 34:—

"With regard to the degree of credit which a

jury ought to attach to a confession much difference of opinion has existed. By some it has been considered as forming the highest and most satisfactory evidence of guilt. *Per* Grose, J., delivering the opinion of the Judges in R. v. *Lambe*, 2 Leach, 554 'The voluntary confession of the party in interest,' says Gilbert, C. B., 'is reckoned the best evidence ; for, if a man swearing for his own interest can give no credit he must certainly give most credit when he swears against it.' (*Gilb.* Ev. 137). So it is stated by the Court in *R.* v. *Warwickshall*, 1 Leach. 263, that a free and voluntary confession is deserving of the highhest credit, because it is presumed to flow from the highest sense of guilt, and therefore it is admitted as proof of the crime to which it refers. On the other hand it is said by Foster, J., (*Discourses*, 243) that hasty confessions made to persons having no authority to examine, are the weakest and most suspicious of all evidence. Words are often misreported, through ignorance, inattention or malice, and they are extremely liable to misconstruction. Moreover, this evidence is not, in the usual course of things, to be disproved by that sort of negative evidence by which, proof of plain facts may be, and often is, confronted. This opinion has also been adopted by Sir W. Blackstone (4 *Com.* 357). It has been said that it is not to be conceived that a man would be induced to make a free and voluntary confession of guilt so contrary to the feelings and principles of human nature, if the facts confessed were not true. (1 *Phill.* Evi. 110, 7th Ed.). It cannot be doubted, however, that instances have occasionally occurred, in which innocent persons have confessed themselves guilty of crimes of the gravest nature. Three men were tried and convicted of the murder of a Mr. Harrison. One of them confessed himself guilty of the fact under a promise of pardon ; the confession, therefore, was not given in evidence against him, and a few years afterwards it appeared that Mr. Harrison was alive.

(*Ms. Case, cited* 1 Leach 264 n.). Mr. Phillips also after stating that in criminal cases a confession carries with it a greater probability of truth than a confession in civil suits, the consequences being more serious and highly penal, and alluding to the maxim, *habemus optimum testem confitentem reum*, adds "but it is to be observed there may not unfrequently be motives of hope and fear inducing a person to make an untrue confession, which seldom operate in the case of *admissions*. But further in consequence also of the universal eagerness and zeal which prevail for the detection of guilt when offences occur of an aggravated character, in consequence also of the necessity of using testimony of suspicious witnesses for the discovery of secret crimes, the evidence of confessions is subject, in a very remarkable degree, to the imperfections attaching generally to hearsay evidence. (See *per* Alderson B. R. v. *Simons*, 6 C. & P. 541; also 5 C. & P. 542). For these reasons the statements of prisoners are often excluded from being given in evidence in cases where they would be unobjectionable as to the admission of a party to a civil suit." (1 *Phill.* Ev. 402, 10th Ed.).

Mr. Wills in his Circumstantial Evidence at p. 69 has the following:—

"By the law of England, a voluntary and unsuspected confession is clearly sufficient to warrant conviction, wherever there is independent proof of the *corpus delicti*. According to some authorities confession alone is a sufficient ground for conviction, even in the absence of any such independent evidence; but the contrary opinion is most in accordance with the general principles of reason and justice, the opinions of the best writers on criminal jurisprudence and the practice of other enlightened nations.* Nor

* Best on Pres 330 and the cases cited. 1 Greenleaf's L. of Ev. § 217; Allison's Princ. 325: Code of Penal d'Autriche. Partie 1, § 2, Ch. X.

are the cases adduced in support of the doctrine in question very decisive, since in all of them there appears to have been some evidence, though slight, of confirmatory circumstances, independently of confession. *

"Judicial history presents innumerable warnings of the danger of placing implicit dependence upon this kind of self-condemnatory evidence; even where it is exempt from all suspicion of coercion, physical or moral, or other sinister influence. How greatly then must such danger be aggravated, where confession constitutes the only evidence of fact of a *corpus delicti*; and how incalculably greater in such cases is the necessity for the most rigorous scrutiny of all collateral circumstances, which may actuate the party to make a false confession! The agonies of torture, the dread of their infliction, the hope of escaping the rigours of slavery or the hardships of military service, a weariness of existence, self-delusion, the desire to shield a guilty relative or friend from the penalties of justice (See 1 *Chitty's Crim. Law* 85), the impulses of despair from the pressure of strong and apparently incontrovertible presumptions of guilt, the dread of unmerited punishment and disgrace, the hope of pardon—these and numerous other inducements have not unfrequently operated, to produce unfounded confessions of guilt.

"Innumerable are the instances on record of confession, extracted 'by the deceitful and dangerous experiment of the criminal question' (See 3 *Gibbons Decline and Fall*, Ch. XVII) of offences which 'were never committed, or not committed by the persons making confession. (See *Jardine* on the Use of Torture in the C. L. of England 3, 6; and see Fortescue De Laudibus legum Angliæ, Ch. 22).

* Rex *v.* Fisher, 1 Leach 286; Rex *v.* Eldridge, R. & R. 441; Rex *v.* Falkner, ib. 481; Rex *v.* White, ib. 508; Rex *v.* Tippet, ib. 509; 1 Greenleaf's L. of Ev. § 217.

Nor have such instances been wanting in other parts of Europe even in the present century.

"When Felton, upon his examination at the Council Board declared as he has always done, that no man living had instigated him to the murder of the Duke of Buckingham, the Bishop of London said to him; 'If you will not confess, you must go to the rack.' The man replied 'If it must be so, I know not whom I may accuse in the extremity of torture—Bishop Laud perhaps, or any lord at this Board.' (See 1 *Rushworth's Collections*, 688). 'Sound sense' observed the excellent Sir Michael Foster 'in the mouth of an enthusiast and a ruffian.' (See *Foster's* C. L. 244, 3rd Ed.).

"Not less repugnant to policy, justice and humanity is the moral torture to which in some (perhaps in most) of the nations of Europe, persons suspected of crime are subjected by means of searching, rigorous, and insidious examinations, conducted by skilful adepts in judicial tactics and accompanied sometimes even by dramatic circumstances of terror and intimidation. (See the cases of Riembaur, a Bavarian priest, charged with murder in Narratives of Remarkable Criminal Trials, by Feuerbach).

At p. 76, *ibid.*:—

"It is obvious that every caution observed in the reception of evidence of a direct confession, ought to be more especially applied in the admission and estimation of the analogous evidence of statements which are only indirectly in the nature of confessional evidence; since, such statements, from the nature of the case, must be ambiguous or relate but obscurely to the *corpus delicti*."

In Greenleaf on evidence 15th Ed, 1892 p. 290, various cases and dicta are cited of confessions which were false, and thus show the need of extreme caution as to accepting all confessions.

Among other instances quoted is the remarkable case of two Boorns (Am), convicted in the Supreme Court of Vermont in September, 1819, of the murder of Russell Colvin, May 10th, 1812. It appeared that Colvin, who was the brother-in-law of the prisoners, was a person of the weak mind; that he was considered burdensome to the family of the prisoners, who were obliged to support him; that on the day of his disappearance being in a distant field where the prisoners were at work, a violent quarrel broke out between them; and that one of them struck him a violent blow on the back of the head with a club, which felled him on the ground. Some suspicions arose at that time that he was murdered, which were increased by the finding of his hat in the same field a few month afterwards. These suspicions in process of time subsided; but in 1819 one of the neighbours having repeatedly dreamed of his murder, with a great minuteness of circumstance, both in regard to his death and the concealment of his remains, the prisoners were vehemently accused, and generally believed guilty of the murder. Upon strict search, the pocket-knife of Colvin and a button of his clothes were found in an old open cellar in the same field, and in a hollow stump, not many rods from it were discovered two nails and a number of bones believed to be those of a man. Upon this evidence, together with their deliberate confession of the fact of the murder and concealment of the body in those places, the prisoners were convicted and sentenced to die. On the same day they applied to the Legislature for a commutation of the sentence of death to that of a perpetual imprisonment which, as to one of them only, was granted. The confession being now withdrawn and contradicted, and a reward offered for the discovery of the missing man, he was found in New Jersey and returned home in time to prevent the execution. He had fled for fear that they would kill him. The bones were those of some animal.

They had been advised by some misjudging friends that, as they would certainly be convicted upon the circumstance proved, their only chance of life, by commutation of punishment, depended upon their making a penetential confession, and thereupon obtaining a recommendation to mercy. [See Taylor's Ev., p. 556 (note)].

A case cited in note to *Warickshall's* case, 1 Leach c. c. 299 n. (1783), is to this effect:—Three men were tried and convicted for the murder of Mr. Harrison of Campden in Gloucestershire. One of them under a promise of pardon confessed himself guilty of the fact. The confession therefore was not given in evidence against him, and a few years afterwards it appeared that Mr. Harrison was alive.

Another case mentioned in Joy on conf. (Ir.) 107 :—(1 Chitty Cr. Law 85). Two brothers committed a robbery in a dark night to a large amount and fled. A younger brother, who was at home and innocent, in order to favour their escape contrived to draw suspicion on himself and when examined, dropped hints amounting to a constructive admission of his guilt which he refused to subscribe. On this he was committed to prison and the persuit of his brothers was discontinued. On the trial he proved an *alibi* on the clearest evidence and obtained an easy acquittal. In the meantime, the actual felons have safely arrived in America with their plunder. (See Dalt. J. C. 164).

Hubert's case, 6 How St. Tr. 807, 808, 809, 821. Hurbert, a Frenchman after the fire of London, confessed that he had set the first house on fire, and had been hired in Paris a year before to do it. Neither the judges nor any present at the trial did believe him guilty but that he was a poor distracted wretch, weary of life and chose to part with it this way. The Jury, however, found him guilty and he was executed accordingly.

Perry's case, 14 St. Tr. 1312. Three persons were executed in the year 1660, for the murder of a person who suddenly disappeared but about two years afterwards he appeared. It appeared that he nad been out to collect his mistress's rents and had been robbed by highway men, who put him on board a ship which was captured by Turkish pirates by whom he was sold into slavery.

There are numerous other instances of persons confessing themselves guilty of crimes of which they were innocent, and of innocent persons acting under the imputation of crimes in a manner affording a strong Presumption of guilt. (See Phillipps' Ev., Vol. I., p. 402 ; Will's Cir. Evi., Chap. III, s. 6).

See also confessions of Witches, *Mary Smith's* case, 2 How St. Tr. 1049 ; case of the Essex Witches, 6 *id.* 647 ; case of the Devon witches, tried by Lord Hale, 8 *id.* 1017. See, also, General Lee's assertion that he was the author of Junius, as narrated in 1 Woodfall's Junius, *122, *123.

In the history of the Criminal Law of India, instances of false confessions under threat, false hope and oppression are not rare. Indeed, owing to the corrupt, inefficient and unscrupulous Police, whose duty it is to hold investigation into serious crimes at their initial stage, in ninety-nine out of a hundred cases the confession is extracted by unfair and illegal means, and the inevitable consequence is that such confession is retracted, as soon as the confessing prisoner realizes his position, either before the committing Magistrate or before the Sessions Judge. It has, therefore, been laid down in innumerable decided cases that it is unsafe to convict a person on his retracted confession alone without having some corroboration of it from some independent and reliable source. This is, undoubtedly, a very sound principle. But opinions prevail that it is quite legal to convict one on his bare confession without any corroborating evidence *aliunde*. And many an

unfortunate person's fate has thus been determined on his own confession only. In England, as must have been seen from what has been cited before, the opinions are conflicting. Distinguished Judges and eminent jurists have been the supporters of opposite views. A free and voluntary confession deserves highest credit, because of the presumption that no man will say anything prejudicial to his interest except from motives of higher truth and keener conscience. When a confessisn is made out of such high and noble feeling, it should be given highest credit and does not perhaps require any corroboration. But since it is well-known that in most cases, such high and noble sentiment does not operate, but it is the fear of the rack as in England, or the fear of indescribable torture in the hands of the Police during the period the unfortunate suspect has to pass in *hajut*, that compels one to confess. In this country where confessions are usually and systematically extorted by the Police by inflicting excruciating torture, which sometimes results in death of the unfortunate prisoner, (Vide *Tarinee Charan Chuttopadhya*, 7 W. R. Cr. 3), it will be but just and humane if a safeguard, like what is laid down in regard to retracted confession, *viz.*, independent corroboration *aliunde*, be required before a man is condemned to death or his liberty is curtailed on his own bare confession.

Cases like that of Harrison, referred to above, are not unknown or uncommon in the annals of the criminal law in India. Vide *Q.* v. *Behary Singh and others*, 7 W. R. Cr. 3 (1867). In this case the above-named police-officers were convicted of causing hurt for the purpose of extorting a false confession. Markby, J., states the facts of the case thus :—

In the month of Cheyt last, a chowkidar went to the house of a young woman, named Cheepoo, residing at the village of Mooahdhopa, in the Zillah of Rungpore, and told her that a body had been

found floating in an adjacent river, and at the same time asked her if she knew what had become of her father. The only reason for this proceeding on the part of the chowkidar seems to have been a quarrel which had taken place between Cheepoo and her father, immediately after which her father had disappeared from the village. This occurred on the Wednesday, and, on the following day, information that the body was found was given at the nearest thannah. On the evening of Friday, a jemadar, named Bany Madhub Roy, one of the prisoners, came to the village and took up his quarters at the house of one Elai Bux. From thence, on the following morning (Saturday) he sent for the woman Cheepoo, for a man named Rocha, and another man named Chand. The jemadar then went taking all these persons with him to the river-side, to where his body was lying, and he then asked Cheepoo whose the body it was. She said she could not distinguish whose body it was, that her father had left her in a rage. The jemadar then asked the neighbours whose body it was, and they said they did not know, but that Uttum (that was the name of Cheepoo's father) was absent, having gone away angry.

The jemadar then abused the people for not telling whose body it was, and took Cheepoo, Chand, Rocha, and also a man named Shabuk to the house of Elai Bux; and Cheepoo states (and the Sessions Judge and Assessors believe her evidence to be mainly true) that the jemadar then said to her that she should escape if she said that it was the body of her father. She replied that it was not the body of her father. The jemadar then struck her across the knees with a light cane. She repeated, however, that it was not the body of her father, and that she could not say that if the jemadar beat her. She says that she then passed the night with the jemadar and that on the following day (Sunday), about 12 o'clock, she consented to say that it was the body of her father. The

jemadar then took her to the body which was just being carried off to the station. The body was set down, and Cheepoo, in the presence of the people, acknowledged that it was the body of her father. The jemadar then beat with a cane Shabuk, Chand, Rocha, and a fourth man named Hunoo, saying: "The daughter of the dead man recognises him, why do not you recognise him?" They said that, as Uttum was missing, perhaps, it was his body. The jemadar told them to speak direct and then they said it was his. The body was then sent into the station, and Cheepoo, Shabuk, Chand, Rocha, and Hunoo were taken by the jemadar back to the house of Elai Bux. The jemadar then told Cheepoo to say that these men had murdered her father and she consented and also at his suggestion, accused the fifth person named Gourmoney. At 3 o'clock of the same day, an Inspector, the prisoner Jagat Chunder Sein, came to the house of Elai Bux, and began to abuse Cheepoo and said "you must confess to the murder." The jemadar, however, interfered and said: "She has confessed, and she is not to be abused." The Inspector then asked Chand why he did not confess and he replied that he had not killed Uttum. Cheepoo says that the Inspector upon this beat Chand but in this she is not corroborated by Chand himself, who does not say he was beaten at this time. The Inspector then went away. Cheepoo passed this night also with the jemadar in Elai Bux's house, the five accused persons being in the same house under the charge of some constables; and these five persons all state that during the night they were tortured in various ways by the three constables who are now prisoners in this case, to make them confess to having murdered Uttam and which the next morning they all accordingly did.

The next day (Monday), the whole party proceeded to the station whither the Inspector had already gone, and from that time the Inspector seems to

have taken charge of Cheepoo and she says that on that night she slept with him. The Inspector took down the confessions of the accused persons, and on the following day (Tuesday) they were sent in to the Magistrate, having been in custody since Sunday. On the next day or the day after (Wednesday or Thursday), the case was enquired into by the Magistrate when just as Cheepoo was narrating with the utmost particularity how her father had been murdered by the accused persons, he himself made his appearance in the cutchery. Cheepoo at first prompted by the Inspector denied it was her father; but as several persons recognised him this was useless, and the whole story came out."

For instances of torture by Police in order to extort confession see, amongst others, the following reported cases :—*Nagena Ourut*, 3 W. R. Cr. 6; *Dhunraj Singh v Peetambur Dass*, 5 W. R. Cr. 5; *Kally Churn Ganguly*, 21 W. R. Cr. 11; *Latif Khan* I. L. R. 20 Bom. 394. Authorised reports of false confessions are few as such cases do not often find their way to the High Court or even when they do, they do not find their place in the Law Reports. But it must be in the experience of every Magistrate and Judge that cases such as instanced above have occurred.

Where a confession is a suspicious one and grossly improbable in certain parts, it must be altogether set aside.—[*Prabhu* 17 P. W. R. 1907 (cr) s. c. 6 Cr. L. J. 141)].

Where there is no judicial proof of the guilt of an accused person, it is illegal to rely upon an unreliable or suspicious confession or a confession which is open to grave suspicion of having been produced by ill treatment of the Police.— (*Khiar Din* 21 P. W. R. 1907 (cr) s. c. 6 Cr. L. J. 266).

Little, if any, importance should be attached to an extra-judicial confession often found to bolster up the circumstantial evidence on which a case depends.—

See *Nazir Jharudar* 9 C. W. N. 474 at p. 477 *per* Maclean C. J.

The tests for appreciating the evidence of witness cannot appropriately be applied in estimating the value to be attached to a confession. The statements of an *accused* person are not subjected to an examination on oath, compelling his attention to accuracy in details. The credence given to such statements when they are voluntary, rests on the improbability of an *accused* person deliberately adhering to a self-criminatory statement which is substantially false. And thus variations in detail are of less importance in considering the effects of a confession than they would be in considering a deposition incriminating a person other than the deponent.—(*Yellaraddi* 6 Bom. L. R. 773).

VARIOUS SECTIONS BEARING UPON THE LAW OF CONFESSION.

The substantive law of confession in India is contained in secs. 24—30 of the Evidence Act, and the adjective law in secs. 164, 364 and 533 of the Code of Criminal Procedure. Subsidiary matters relating to the subject are dealt with in secs. 80, 114 and 133 of the Evidence Act, and secs. 20,9 287, 288, 298, 337, 338 and 342 of the Code of Criminal Procedure.

Section 164, Cr. P. C., deals with confessional statements of the accused made during the police investigation, (See *Viran*, I. L. R. 9 Mad. 224 : *Bhairab Chundra Chuckrabutty*, 2 C. W. N. 702) and such statement can therefore only be recorded under that section.

Sec. 364, Cr. P. C., includes all statements made in Court by the accused whether they amount to a confession or not.

Confessions are received upon the presumption

that no person will *voluntarily* make a statement which is against his interest unless it be true.—(3 Russ 477).

Therefore, whenever it transpires that the confession has been made *not* voluntarily but has been influenced or caused by inducement, threat or promise, proceeding from some person in authority, it is always excluded ; and sec. 24 of the Evidence Act declares such confessions as irrelevant. But see sec. 28, which enacts that a confession, made after *removal* of impression caused by inducement, threat or promise, is relevant.

It is to discountenance and prevent the very objectionable practice that obtains in this country amongst the police-officers, *viz.*, to extort confession through pressure and compulsion, that the legislature has provided a safeguard for the prisoner's interest in sec. 25 which renders a confession made to a police-officer *absolutely* inadmissible. The terms of the section are *imperative* and a confession made to any police-officer, (and the term ' police-officer ' has always been construed in its widest sense by all the High Courts in India) and, under any circumstance, is to be excluded. It is inadmissible even if made in the presence of a Magistrate.—(*Dumon Kahar*, 12 W. R. Cr. 82).

The provisions of sec. 25 are *unqualified*. The person making confession may, or may not be, an accused person; may or may not be in police-custody at the time he is making a confession. And also it is immaterial whether the confession is made in the presence of a Magistrate or not. So the statement of an accused person, taken by a police-officer preliminary to his arrest, is held to be a confession and inadmissible under sec. 25, Evidence Act.—(*Jadab Das*, 4 C. W. N. 129).

Sec. 26 does not qualify sec. 25. It gives a further safeguard to the interest of an accused

person. This section means that no confession, made by a person whilst in police-custody, shall be admissible, unless made in the immediate presence of a Magistrate. It should be remembered that sec. 25 renders inadmissible a confession made to a "police-officer" under *any* circumstance. So, if a confession is made to a "police-officer," *in the immediate presence of a Magistrate*, that confession will not be admissible under this section; but, if the confession is made to a *private person*, that is to say, a person other than a "police-officer," and *in the immediate presence of a Magistrate*, such confession will be admissible as against its maker. [See *Haribole Chunder Ghose*, I. L. R. 1 Cal. 207 (F. B.) at p. 215; and *Nilmadhub Mitter*, I. L. R. 15 Cal. 595 (F. B.) at p. 607].

Under this section it is not necessary to shew formal arrest. If the accused is present before the Police and he cannot depart at his own free will, that will be sufficient custody.—(*Choda Atchenah*, 3 Mad. H. C. R. 318).

Where the confession has been made by a person who is being tried jointly with another, that other may prove it as evidence in his own favour, although under sec. 25 or sec. 26, it could not be used against the person making it: (*Pitamber Jina*, I. L. R. 2 Bom. 61). In such a case the juri must be warned not to give attention to it as regards the person making it.

Under sec. 26 some sort of custody is sufficient: see *Kamalia* I. L. R. 10 Bom. 595. Here the prisoners were among certain persons who had been collected by a police-*patel* on suspicion and the police-*patel* had himself accused them of complicity in the offence. The prisoners were deemed to be in the custody of the Police.

RECORDING OF STATEMENT OR CONFESSION.

A distinction has been drawn between admission of guilt by the accused when asked under sec. 255 Cr. P. C., and his examination recorded under sec. 364, Cr. P. C. He can be convicted on the admission made under sec. 255, even if it is not properly recorded as directed by sec. 364, Cr. P. C. (*Chumman Shah*, I. L. R. 3 Cal. 756).

The terms of secs. 164 and 364 Cr. P. C., are to be strictly observed in recording confessions: (*Lal Sheikh*, 3 C. W. N. 387). Defect can be cured by examining the Magistrate who recorded the confession. (See sec. 533, Cr. P. C.). But it should be remembered that sec. 533 cannot cure a defect of substance; it can cure one of form only:—(*Bhairub Chandra Chuckerbutty*. 2 C. W. N. 702. See *Rajani Kanta Koar* 8 C. W. N. 22).

Statements contemplated by sec. 164, Cr. P. C., should be recorded in the manner prescribed for recording evidedce and *confession* must be recorded in the manner provided by sec. 364. Cr. P. C. (*Bhairub Chandra Chuckerbutty*, 2 C. W. N. 702). Sec. 164 provides only for recording voluntary confession and not any statements other than confession such as elicited by his examination under secs. 209 and 342:—(*Bhairub Chandra Chuckerbutty*, 2 C. W. N. 702; *Viran*, I. L. R. 9 Mad. 224).

Secs. 355 to 363 deal with the mode of recording evidence and can only relate to the statements of witnesses, while sec. 364 deals with all statements made by accused persons whether amounting to confession or not:—(*Bhairub Chandra Chuckerbutty*, 2 C. W. N. 702).

See *Lal Sheikh*, 3 C. W. N. 387, for proper mode of recording confession or statement of an accused person.

Sec. 21 of the Evidence Act is subject to special provisions relating to confessions and statements of accused persons enacted in secs. 24, 25 and 26 of the Evidence Act and secs. 164 and 364, Cr. P. C. Were it otherwise confessions and statements of accused persons, not recorded in accordance with the requirements of secs. 164 and 364, might be proved as admissions by the accused and the wholesome provisions elaborately laid down in those two sections practically reduced to a nullity:—(*Bhairub Chundra Chuckerbutty*, 2 C. W. N. 702).

A Deputy Magistrate was deputed under sec. 159, Cr. P. C., to hold an investigation into a case of murder and he recorded statements of the accused. But such statement was not admitted in evidence as it was not recorded according to the provision of sec. 164, Cr P. C., as it ought to have been recorded at the stage of police-investigation.—(*Ibid*).

The accused having stated in his examination before the committing Magistrate that the deceased boy had fallen from a terrace and that his respiration had stopped and that he had buried his ornaments under a tree, a Sub-Deputy Magistrate was deputed to verify these statements. He took the accused to the place of occurence and the accused pointed out to the Sub-Deputy Magistrate a place on the roof of his house from which he said the deceased had fallen and also a place where he said he had buried the body of the deceased: *Held*, that the statements made before the Sub-Deputy Magistrate were inadmissible in evidence. —(*Rajani Kanta Koar*, 8 C. W. N. 22. Followed 9 Mad. 224 and 2 C. W. N. 702).

Sec. 164, Cr. P. C., enables a Magistrate to record the statement of a person as a witness as well as the confession of one accused of an offence:—(*Malka* I. L. R. 2 Bom. 643).

But if he is recording a statement and not a confession, it should be made on oath:—(*Alagu Kone*, I. L. R. 16 Mad. 421).

In recording a statement or a confession under sec. 164, Cr. P. C., a Magistrate should record the circumstances under which it is made, in whose custody the person is at the time and he should carefully observe the following formalities :—

(1) Every question and answer must be recorded.

(2) Accused's signature or mark must be affixed.

(3) The Magistrate must make a memo. as specified in sec. 164, Cr. P. C.

A confession made before a Magistrate in a Native State and recorded by him under sec. 164, Cr. P. C., is admissible in evidence in a trial in British India, although such confession was subsequently retracted in the court of the committing Magistrate and of Sessions.—(*Bhola* 8 P. R. 1907 (Cr.) s. c. 33 P. W. R. 1907 : 6 Cr. L. J. 337 : 46 P. L. R. 1908).

Confession made before, and duly recorded by, a Magistrate in a Native State can be proved and made admissible under sec. 80, Evidence Act : [*Sunder Singh*, I. L. R. 12 All. 595 (followed by *Nagla Kala*, I. L. R. 22 Bom. 235). But see *Chinna Venkada*, Weir 800 *contra*]. The Allahabad Court in this case pointed out that there was nothing in the law to prevent a confession being proved, no matter, when and where made, provided that it was not made under the circumstances which would render it inadmissible.

When a prisoner is brought before a Magistrate to make a confession, it is the duty of the Magistrate to question him with a view to discover whether he confesses voluntarily, and this questioning must be in pursuance of a real endeavour to find out the object of it. Unless the Magistrate has made a real and substantial enquiry as to the voluntary nature of a confession, a confession before him is inadmissible in evidence. —(*Thein Maung* 4 Cr. L. J. 198 : s. c. 3 L. B. R. 173 ; *Naga Shwe Sin* 3. L. B. R. 213 s. c. 4 Cr. L. J. 385)

A Magistrate should ascertain whether a confession voluntarily made before and not merely after it has been recorded :—(*Rayappan*, Weir 820).

An accused person should not be asked questions of incriminating character which is highly improper and a confession so obtained is inadmissible :—(*Madar Saheb*, Weir 822).

If at the time of recording a confession, the Magistrate is not competent to hold the inquiry, but he subsequently has held the inquiry and committed the accused to the Sessions, the confession should have been recorded under sec. 164, Cr. P. C. :—(*Mannoo Tamoolee*, I. L. R. 4 Cal. 696).

Under sec. 164 Cr. P. C., it is not necessary to show for the admission of the statement, that it was made before a Magistrate who had jurisdiction to hold preliminary inquiry.

Under both sec. 164 and sec. 364 a confession must be signed by the accused and the Magistrate, and a certificate by the Magistrate must be attached : (*Lal Sheikh*, 3 C. W. N. 387). But see *Raghu*, I. L. R. 23 Bom. 221, where a confession which was not signed by accused was admitted and parole evidence taken on the point.

A thumb mark affixed to a confession by an accused able to write his name is not a 'signature' within the meaning of S. 3 cl. 52 of the general clauses. Act or S. 164 of the Code of Criminal Procedure.—(*Sadananda Pal* 32 Cal. 550).

An accused person refusing to sign his statement recorded under sec. 364 Cr. P. C. does not commit offence under sec. 180 I. P. C. :—(*Ba Tin* 4 Cr. L. J. 205 s. c. 3 L. B. R. 199).

Confession must be *bonâ fide* made to and recorded by the Magistrate. His presence, while the confession is being made to the Police, is not sufficient :—(*Domun Kahar*, 12 W. R. Cr. 82).

The following are not fatal objections to the express direction of sec. 164, Cr. P. C., in the absence of prejudice:—

(*a*) Confession recorded in a narrative form and not by way of question and answer: (*Munshi Sheikh*, I. L. R. 8 Cal. 616; *Fekoo Mahto*, I. L. R. 14 Cal. 539: *Sagambur*, 12 C. L. R. 120; *Yakub Khan*, I. L. R. 5 All. 253 at p. 256).

(*b*) If signature or attestation of the accused not obtained: [*Titu Maya*. I. L. R. 8 Cal. 618 n., (F. B.): *Raghu*, I. L. R. 23. Bom. 221].

(*c*) If memo. attached by the Magistrate to the statement varied from the form given: (*Bhairon Singh*, I. L. R. 3 All. 338. Want of English memo.: (*Fekoo Mahto*, I. L. R. 14. Cal. 539; *Anga Valayan*, I. L. R. 22 Mad. 15).

(*d*) If certificate attached to a confession was not written on the day the confession was recorded. (*Daji Narsu*, I. L. R. 6 Bom. 288).

(*e*) The absence of Magistrate's full signature: (*Rezza Hossein*, 8 W. R. Cr. 55: *Bhikaree*, 15 W. R. Cr. 63).

[*Refusal to sign confession: sec. 180, I. P. C., does not apply to statements made in reply to question put by the Court.—Sirsapa*, I. L. R. 4 *Bom. 15*].

The statement should always be recorded in the *language* of the accused and it should not be dispensed with whenever it is practicable: [*Nilmadhab Mitter*, I. L. R. 15 Cal. 595, (F. B.)].

This irregularity cannot be cured by sec. 533, Cr. P. C.: (*Viran*, I. L. R. 9 Mad. 224; *Jai Narayan Rai*, I. L. R. 17 Cal. 862).

Calcutta High Court disagreed with this view

in later cases, but did not refer the matter to a Full Bench, as they considered that in the absence of any evidence to the contrary, they might assume that it was not practicable to take down the statements in the language it was taken down.—See *Lalchand*, I. L. R. 18 Cal. 549; *Sagal Samba Sujao*, I. L. R. 21 Cal. 642 at p. 660; *Razai Mia*, I. L. R. 22 Cal. 817: and also *Moonsai Bibee*, 24 W. R. Cr. 54.

Where a Sessions Judge admitted in evidence statements in the nature of confessions made in vernacular but recorded in English by a Joint Magistrate, and there was no evidence that it was not practicable to record them in the language they were made and the Joint Magistrate was not examined as a witness nor was evidence taken that the accused duly made the statements so recorded: *Held*, that as it could not be presumed without some evidence that the statements had to be recorded in English or they could not be recorded in the language they were made, there was no justification for their being recorded in English, and no presumption under sec. 80 Evi. Act could be made in respect of the record made in English; and as no evidence was taken to prove that the accused had actually made those statements, the Sessions Judge was wrong in admitting such a record of the statements against the accused.—(*Bawar* 10 O. C. 112 s. c. 6 Cr. L. J. 94).

The provisions of sec. 164, Cr. P. C., do not apply to the case of confessions taken by the Magistrate who is actually investigating the case and examining the witnesses preparatory to commitment.

In that case he is to act according to sec. 364 Cr. P. C.:—[*Anantaram Singh*, I. L. R. 5 Cal. 954 (F. B.)].

The provisions of sec. 164, Cr. P. C., apply to cases where some other Magistrate takes a confession, and forwards it to another Magistrate by whom the case is enquired into and tried:—(*Jetto*, 23 W. R. Cr. 16).

Under both secs. 164 and 364, Cr. P. C., a confession or a statement must be recorded in writing in the manner specified; and if this is not done at all, or done in a manner which does not conform to law and cannot be cured by sec. 533, Cr. P. C., then it is wholly inadmissible and oral evidence of the statement actually made cannot be received: (*Bai Ratan*, 10 Bom. H.C.R. 166; *Mannoo Tamoolee*, I. L. R. 4 Cal. 696; *Viran*. I. L. R. 9 Mad. 224; *Jai Narayan Rai*, I. L. R. 17 Cal. 862; *Bhairnb Chundra Chuckerbutty*, 2 C. W. N. 702). But see *Raghu*, I. L. R. 23 Bom. 221; parole evidence could be given of the terms of the confession and those terms, when proved, might be used as evidence against accused. See also *Anga Valayan*, I. L. R. 22 Mad. 15.

Sec. 164, Cr. P. C. does not apply to the town of Calcutta [*Nilmadab Mitter*, I. L. R. 15 Cal. 595 (F. B.)]; nor to the town of Bombay (*Visram Babaji*, I. L. R. 21 Bom. 495) and (by reference) secs. 364 and 533 do not, in such cases, apply to statement and confession recorded by a Presidency Magistrate before the commencement of trial and in the course of a police-investigation.

But such statement or confession, though not taken under sec. 164, Cr. P. C., is admissible in evidence against the prisoner:—[*Visram Babaji*, I. L. R. 21 Bom. 495; followed *Nilmadhab Mitter*, I. L. R. 15 Cal. 595, (F. B)].

Sec. 164, Cr. P. C., does not warrant the recording of statements of witnesses by a Magistrate in order to fix them down in view of subsequent judicial proceedings:—(*Jadab Das*, 4 C. W. N. 129).

Law does not require that in the case of a witness so examined there should be a certificate after proper inquiry that the statement has been voluntarily made.—(*Ibid*).

A witness sent by the Police is presumably under

restraint and a statement made by such witness and so recorded raises suspicion that it was not voluntarily made.—(*Ibid*).

In a trial by Jury the Judge ought to tell the Jury that the evidence of witnesses taken under sec. 164 Cr. P. C. must be accepted with a great deal of caution. He ought to point out that it is not always proper for the police-officers to get such statements recorded for the purpose of pinning the witnesses down to some statements, especially at a time when they are not entirely free from police influence.—(*Kali Singh*, 7 C. L. J. 246).

When an accused person has been in custody of the Police and has made a confession, it is important that the Magistrate before recording such confession under sec. 164, Cr. P. C. should ascertain how long the accused has been in custody. If there is no record of that fact, it is the duty of the Sessions Judge before holding the confession relevant under sec. 24, Evidence Act, to send for the Magistrate and satisfy himself on the point :—(*Narayan*, I. L. R. 25 Bom. 543; *Anga Valayan*, I. L. R. 22 'Mad.

During police-investigation the examination of an accused by a Magistrate by way of cross-examination is improper :—(*Gya Singh*, 5 C. W. N. 864).

A police-officer has no authority to place a witness before a Magistrate, not competent to deal with the case, and to ask him to record his statements under sec. 164 Cr. P. C. Such an act would contravene the policy of law underlying sec. 162. Cr. P. C. :—(*Nuri Sheikh*, 6 C. W. N. 596).

A confession unless made in accordance with sec. 164, Cr. P. C. cannot be admissible as evidence under sec. 80 of the Evidence Act. Where a confession made before a Magistrate did not bear his certificate stating his belief that it was freely and voluntarily made as required by sub-section 3 of

sec. 164. Cr. P. C. *Held*, that it could not be admitted under sec. 80 of the Evidence Act without proof of its having been made :—(*Radhe Halwai*, 7 C. W. N. 220).

A statement made by an accused person to a police-officer under sec. 162, Cr. P. C., is not admissible in evidence against him, when he is on his trial for the offence he is charged with.—(*Khuda Buksh*, 11 P. L. R. 1905).

In a case of murder, a certain person was examined as a witness under sec 164, Cr. P. C. She made a statement to this effect that another person, who had absconded from the village, had murdered the deceased and had deposited the dead body in a certain place. She pointed out the place where the dead body had been buried and delivered up the jewels which the deceased had been wearing at the time of the alleged murder. Later on, she and the man that had been absconding were put upon their trial jointly, on a charge of murder of the deceased and the statement made by the former was put in evidence. *Held*, that the statement was inadmissible in evidence against the co-accused because though when it was made, the deponent was a witness, she was no longer a witness at the trial, and the co-accused had no opportunity of cross examining her as to the facts and allegations contained therein : that it was inadmissible on the charge of murder, as against the deponent herself, who withdrew the same at her trial, stating that she was coerced into making the same because it was no confession of guilt on her part and she did not implicate herself as a participator in the murder. There being no other independent evidence of a reliable character against either of the accused, both were acquitted.—(*Sri Ram*, 2 A. L. J. 100 ; s. c. 2 Cr. L. J. 59).

A confession duly recorded and certified under sec. 164, Cr. P. C.. is admissible in evidence against

the person making it unless shut out by the provisions of sec. 24, Evidence Act.

In connection with the recording of confession, sec. 80, Evidence Act, should be remembered. For this section raises a presumption that a document purporting to be a statement or confession by any prisoner or accused person, taken in accordance with law and purporting to be signed by any Magistrate or Judge, is a genuine document, and the statement therein is true and duly taken, and a similar presumption arises also under this section with regard to the deposition of witnesses, given in the course of a judicial proceeding or before any officer authorised by law to take such evidence.

Sec. 80 does not render admissible any particular kind of evidence but only dispenses with the necessity for *formal proof* of certain documents taken in accordance with law.

A document must be taken in accordance with law. So where a confession wast aken by a Deputy Magistrate in his executive capacity and not as a Magistrate under the Criminal Procedure Code: the document purporting to be such confession was not received under sec. 80:—(*Viran*, I. L. R. 9 Mad. 224).

A confession unless made in accordance with sec. 164, Cr. P. C., cannot be admissible as evidence under sec. 80, Evidence Act. Confession not bearing Magistrate's certificate as required by sub-sec. 3 of sec. 164, Cr. P. C., could not be admitted under sec. 80, Evidence Act, without proof of its having been made.—(*Radhe Halwai*, 7 C. W. N. 220).

Sec. 80 raises three presumptions in favour of document purporting to be deposition or confession taken in accordance with law: *viz.* (1) such document is genuine; (2) it is true; (3) the statement is duly taken. So, as long as other conditions mentioned in the section are fulfilled, these presumptions will arise of themselves in respect of any such document.

For instance, if a document purporting to be a confession, taken in accordance with law, shows on its face that it was taken by any Judge or Magistrate, the Court will presume that the document is *genuine*; that the statement as to the circumstances under which the document was taken, purporting to be made by the porson signing it is *true*; and that the statement or confession was duly taken. And no formal proof thereof need be given:—(*Nussuruddin*, 21 W. R, Cr. 5; *Kachali Hari*, I. L. R. 18 Cal. 129; *Shivya*, I. L. R. 1 Bom. 219; *Sunder Singh* I. L. R. 12 All. 595; *Nagla Kala*, I. L. R. 22 Bom. 235).

Where during an enquiry under sec. 202 Cr. P. C., the Magistrate recorded a statement made by the person against whom the complaint was filed; *Held*, that the statement cannot be regarded as having been recorded under sec. 164 or sec, 364 Cr. P. C. It was a statement made during an inquiry under sec. 202 Cr. P. C. where the person was not in the position of an accused person, and as such cannot be admitted in evidence as proving itself against the person. (*Sat Narain Tewari*, 10 C. W. N. 51: s. c. 32 Cal. 1085). The question whether such statement could be proved in any way as an admission was left open.

When an accused person makes two incriminating statements, one before a Magistrate and another before a Police-officer, it is very essential to compare them and to try and ascertain why there occurred a change and which of them was the true one, with a view to testing the value of the confession before the Magistrate; the other being of course inadmissible for any other purpose whatever as made to the Police. —(*Khiar Din*, 21 P. W. R. 1907 (cr.): s. c. 6 Cr. L. J. 266).

Inducement, Threat or Promise.

It must proceed from a "person in authority." The expression "person in authority" in sec. 24, Evidence Act, is not defined by the Act.

In *Navroji Dadabhai*, 9 Bom. H. C. R. 358 at p. 368, Sargent, C. J., observed :—"The test would seem to be—had the person authority to interfere with the matter?—And any concern or interest in it would appear to be held sufficient to give him that authority." See *R.* v. *Warringham*, 2 Den. C. C. 447 n., referred to by Sargent, C. J., in the case.

Generally a "person in authority" is one who is engaged in the *apprehension*, *detention*, *prosecution* or *examination* of a person charged or accused. See Taylor's Evidence, §§ 873, 874.

The following persons have been held as "person in authority" :—

A travelling auditor in the service of the G. I. P. Ry. Co. (*Navroji Dadabhai* 9 Bom. H. C. R. 358); a Police-patel (*Rama Birapa*, I. L. R. 3 Bom. 12); a Police-constable (*Luchoo*, 5 N. W. P. 86); a Magistrate (*Asghar Ali*, I. L. R. 2 All. 260; *Uzeer*, I. L. R. 10 Cal. 775); Honorary Magistrate acting as prosecutor (*Ramdhon Singh*. 1 W. R. Cr. 24); Session Judge (*Luchoo*, 5 N. W. P. 86); a Village Magistrate (*Thandraya Mudaly*, I. L. R 26 Mad. 98); as also Magistrate's clerk (*R.* v. *Drew*, 8 C. & P. 140); the Master of a vessel (*Hicks*. 10 B. L. R. App. 1); the prosecutor (*R.* v. *Jenkins*, R. & R. 492; R. v. *Jones* (*ib*) 152); prosecutor's wife (*R.* v. *Warringham*, 2, Den. C. C. 447 n.; *R.* v. *Upchurch*, 1 R. & M. C. C. 465; R v. *Taylor*, 8 C. & P. 733): and other cases; prosecutor's attorney (R. v. *Croydon*, 2 Cox. 67); the master or mistress of the prisoner, if the offence has been committed against the person or property of either, but otherwise not: (*R.* v. *Moore*, 2 Den. C. C. 522); the Chairman of the Com-

pany who is prosecuting him: *R.* v. *Thompson* (1893); the constable: *R.* v. *Morton*, (1843); *R.* v. *Swatkins*, (1831); *R.* v. *Mills*, 1833); *R.* v. *Shepherd*, (1836); or other officer having him in custody: *R* v. *Enoch*, (1833); *R.* v. *Windsor*, (1864); *R.* v. *Sleeman*, (1853); *R* v. *Vernon* (1872); a Magistrate: *R.* v. *Drew*, (1837); *R.* v. *Cooper*, (1833); *Guild's case*, (1828) (Am.); or the like, as a Surgeon. See *R.* v. *Kingston*, (1830); *R.* v. *Garner*, (1848); a husband of the prisoner: *R.* v. *Laughter*, (1846).

Confession made to the Medical Officer of the Regiment who told the accused, when he was under his treatment in the hospital, that it would be better for him to tell the truth as to how he came about certain wounds: *Held*, that the Medical Officer was not a person in authority in respect of any proceedings which might be contemplated or taken against the accused who made the confession to him.—(*Mahamad Buksh Karim Buksh*, 8 Bom. L. R. 507).

Confession of guilt to the Commissioned Officer of the Regiment who stated to the accused that he had already obtained information from another person, and promised secrecy if they told the truth: *Held* that the Company Officer was not shown to be a person in authority in relation to any proceedings that were taken against him; and that the alleged deception and inducement were covered by the provisions of sec. 29, Evidence Act.—(*Ibid*)

Members of a *Punchayet* are not persons "in authority" within the meaning of the section:—(*Mohan Lal*, I. L. R. 4 All. 46). But See 11 C. W.N. 904 *Contra*.

Confession procured by inducements proceeding from persons having no authority are admissible. (Field's Evidence, p. 136).

Confession made through inducement offered by persons in authority will be rejected as not being voluntary. The same rule will perhaps prevail

though the inducement was not actually offered by the person in authority if it were held out by *any one in his presence*, and by his silence sanctioned it. (See Taylor's Evi., p. 563). *R.* v. *Pountney*, (1836); *R.* v. *Drew*, (1837); *R.* v. *Simpson*, (1834) (Ir.); *R.* v. *Laughter*, (1846); *R.* v. *Luckhurst*, (1853). But see *R.* v. *Parker*, (1861).

A confession is presumed to be voluntary unless the contrary is shown. Therefore in the absence of evidence it is not to be presumed that a statement objected to on the ground of its having been induced by illegal pressure is inadmissible :—(*Balavant* v. *Pendharkar*, 11 Bom. H. C. R. 137; *Dada Ana*, I. L. R. 15 Bom. 452 at p. 480).

Confession obtained after illegal detention by the Police must be regarded with grave suspicion :—(*Madar and anr.*, All. W. N. [1885], p. 59 ; *Behari Singh*, 7 W. R. Cr. 3).

The inducement must have reference to the *charge* and must be such as might reasonably induce the person to whom it is addressed to suppose that by making a confession he would gain some advantage or avoid some evil of a temporal nature in reference to the criminal proceeding then going on against him.

If the inducement be made as to one charge, it will not affect a confession as to a totally different charge ; (*R.* v. *Warner*, 3 Russ. Cr. 452 n.) unless where two crimes being charged both form parts of the same transaction :—(*R.* v. *Hearn*, 1 Car. & M. 109).

An inducement relating to some collateral matter unconnected with the charge will not exclude a confession. As for instance, a promise to give the prisoner a glass of spirits, or to strike off his handcuffs, or to let him see his wife, will not be a bar to the admissibility of the confession. (Taylor's Evidence. § 880).

Advantage to be gained or the evil to be avoided must be of a *temporal* nature. Therefore, confession induced by moral or religious exhortation, by reference to a future state of reward or punishment, will not be excluded :—(*R.* v. *Court*, 7 C. & P. 486 ; *R.* v. *Lloyd*, 6 C. & P. 393 ; *R.* v. *Reeve*, 1 C. C. R. 362 ; *R.* v. *Wild*, R. & M. 452 ; *R.* v. *Jarvis*, 1 C. C. R. 96).

Again the *advantage* or *evil* must have reference to the *proceedings* against the accused :—(*Navroji Dadabhai*, 9 Bom. H. C. R. 358 ; *Luchoo*, 5 N. W. P. 86 ; *Rama Birapa*, I. L. R. 3 Bom. 12 ; *Ramdhun Singh*, 1 W. R. Cr. 24 ; *Asghar Ali*, I. L. R. 2 All. 260 ; *Radhanath Dosadh*, 8 W. R. Cr. 53 ; *Bishoo Manjee*, 9 W. R. Cr. 16 ; *Jagat Chunder Mali*, I. L. R. 22 Cal. 50).

But a confession made under promise of pardon may be admissible under sec. 339, Cr. P. C. :—(*Asghar Ali*, I. L. R. 2 All. 260 ; *Hanmanta*, I. L. R. 1 Bom. 610).

Spiritual advice to an accused person to confess whatever lay upon his conscience for the good of his soul is not within the Act :—(*R.* v, *Githam*, R. & M. 186).

Various expressions have been held to amount to an "inducement." But the principle has been broadly stated *per* Earle, J., in *R.* v. *Garner*, 2 C. & K. 920 at p. 925 :—"It does not turn upon what may have been the precise words used ; but in which case whatever the words used may be, it is for the Judge to consider, before he admits or rejects the evidence, whether the words used were such as to convey to the mind of the person addressed an intimation that it will be better for him to confess that he committed the crime, or worse for him if he does not."

"What you say will be used as evidence against you" or "for or against you" will not vitiate the

confession. For such expression merely implies *caution*:—(*R.* v. *Jarvis*, 1 C. C. R. 96; *R.* v. *Wright*, 1 Lew 48; *R.* v. *Long*, 6 C. & P. 179). See Phip. Evi. 161.

"I must know more about it" amounts to a threat (*R.* v. *Reason*, 12 Cox. 228).

"You had better tell the truth" has always been held to import a threat or promise: (*Uzeer*, I. L. R. 10 Cal. 775; *Navroji Dadabhai*, 9 Bom. H. C. R. 358; and many English cases). Kelly, C. B., in *R.* v. *Jarvis*, said "the words 'you had better' seem to have acquired a sort of technical meaning."

"Better confess" according to Sir Barnes Peacock, is objectionable but not "better tell the truth."—(*Nobadwip Gossami*, 1 B. L R. O. Cr. 15 at p. 22). But see *Uzeer*, I. L. R. 10 Cal. 775, *supra*, in which warning by a Magistrate "he had better tell the truth" is held to be objectionable.

Confessions made after warning by the Magistrate—"not to expect any advantage or disadvantage therefrom"—were held to be inadmissible:—(*Basora* A. W. N. (1906) 75: s. c. 3 cr. L. J. 324).

The following expressions have been held to involve threat and promise:—

"If you don't tell the truth, I will send for the constable to take you."—(*R.* v. *Hearn*, 1 Car. & M. 109; *R.* v. *Richards*, 5 C. & p. 318).

"If you tell me where my goods are I will be favourable to you."—(*R.* v. *Cass*, 1 Lea 293, note).

"If you confess the truth, nothing will happen to you."—(*Q.* v. *Luchoo*, 5 N. W. P. 86).

"If you don't tell me, I will give you in charge of the Police till you do tell me."—(*R.* v. *Luckhurst*, Dears C. C. 245).

"If you are guilty, do confess: it will perhaps save your neck; you will have to go to prison. Pray tell me if you did it."—(*R.* v. *Upchurch*, 1 Moo. C. C. 465).

"I only want my money; if you give me that you may go to the devil."—(*R.* v. *Jones*. R. & R. 152).

"Tell me what really happened and I will take steps to get you off."—(*E.* v. *Rama Birapa*, I. L. R. 3 Bom. 12).

"If you confess to the Magistrate you will get off." —(*Q.* v. *Ramdhun Singh*, 1 W. R. Cr. 24).

"I will get you released if you speak the truth." (*Q.* v. *Dhurum Dutt Ojha*, 8 W. R. Cr. 13).

And so forth.

Statement admitting crime but pleading compulsion by others is not a confession on which any person ought to be convicted :—(*Kisto Mundle*, 7 W. R. Cr. 8).

A confession made under a promise of pardon is inadmissible.—(*Asghar Ali*, I. L. R. 2 All. 260; *Radhanath Dosadh*, 8 W. R. Cr. 53).

A confession induced by promising immunity from prosecution of another case is not admissible.— (*Kaloop*, 12 P. W. R. 1907 : s. c. 5 Cr. L. J. 437).

In the absence of evidence, illegal pressure is not to be presumed :—(*Balavant* v. *Pendharkar*, 11 Bom. H. C. R. 137).

Confession made under threat for a purpose other than to extort confession is inadmissible :—(*Q.* v. *Hicks*, 10 B. L. R. App. 1).

If a constable advises a prisoner to confess and then takes him before a Magistrate who cautions him not to criminate himself, the confession is admissible :—(*Navroji Dadabhai*, 9 Bom. H. C. R. 358 at p. 370; *R.* v. *Limgate*, cited in 3 Russ. p. 498).

A police-officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession :—(*Dhurum Dutt Ojah*, 8 W. R. Cr. 13).

In determining whether inducement has ceased to operate, it will be material to consider the *nature* of such inducement, *time* and *circumstances* under which it was made, *situation* of the person making it, *time intervened* between inducement and confession, whether caution given, generally, specifically or expressly, &c., &c.

A statement made after arrest and on the way to the Magistrate is admissible, the only motive for confession being removed :—(*R.* v. *Griffiths*, cited in 3 Russ, p. 493).

Sec. 24, Evidence Act, which makes inadmissible a confession which is otherwise unobjectionable, if it appears to the Court to have been caused by an inducement, seems to throw it upon the party who has made the confession to get rid of it, and this cannot be done by his own unsupported assertions at a subsequent stage of the proceedings :—(*Balavant* v. *Pendharkar*, 11 Bom. H. C. R. 137).

Conversely where a vitiating influence has been shown, it is for the prosecution to make out that it has been removed.

A Sessions Judge commits a grave error in law and procedure who refuses to inquire into the allegation of irregularity, warning by the Magistrate and the circumstances under which a confession is made :—(*Kashinath Dinkar*, 8 Bom. H. C. R. 126).

Where a confession made before a Magistrate is retracted before the Court of Sessions, Petheram, C. J., said in such cases Sessions Judge's duty will be to examine the Police diaries, and the Police constable in whose charge the case was, so as to find out any pressure put upon the accused by the Police

to make the confession :—[*Mandar & anr.*, 59 and *Ramanand*, All. W. N., (1885) 221].

A Sessions Judge should exercise cautious discretion in admitting evidence given by a witness before the committing Magistrate where allegation was that the statement was made under pressure and threat by the Police. The Sessions Judge should not rely upon such evidence without examining the police-officer as to the restraint and pressure alleged to have been made.—(*Bajrangilal*, 4 C. W. N. 49).

EXAMINATION OF THE ACCUSED.

Secs. 209 and 342, Cr. P. C., provide for the examination of the accused "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him."

Sec. 209 authorizes a Magistrate who holds inquiry into cases triable by the Court of Sessions or the High Court to examine an accused person.

Sec. 342 provides for any inquiry or trial.

Sec. 342 is *imperative*, and not merely permissive, on the point that the Court must question an accused generally on the case after the witnesses for the prosecution have been examined and before he is called upon for his defence :—(*Manchi*, Bom. H. C., Nov. 24, 1892 ; *Razak*, Bom. H. C., Oct. 2, 1894).

The term 'shall' in Sec 342, Cr. P. C., makes the duty imposed on the Court to question the accused generally on the case after the witnesses for the prosecution have been examined and before he is called for his defence, *mandatory* not discretionary. Having regard to the object of the examintion specified in the section *viz.*, that the Legislature intended it to

enable the accused to explain any circumstances in the evidence against him, it is clear that the omission by the Court to perfom such duty in a criminal trial must be presumed to have seriously prejudiced the accused.

In all criminal matters, the utmost strictness must be observed and forms must be closely complied with where the liberty of the subject is at stake, when from the statute prescribing those forms it appears that they were prescribed by the Legislature in the interests of the accused.

In a criminal trial the Court is bound to draw no inference of waiver against an accused person, especially in the case of omission by the Court to perform a duty imposed on it in express terms by the Legislature in his interest unless the accused waived it expressly :—(*Savatya Atma Pastya*, 9 Bom. L. R. 356).

The provisions of sec. 342 of the Cr. P. C. apply to the case of an accused tried before a Sessions Judge even when he has been questioned on the case generally by the committing Magistrate :—(*Raju Ahilaji*, 9 Bom. L. R. 730).

Even in a summary case a Magistrate is bound to record a summary of the accused's examination and any statements in the course of the examination :—(*Harischandra Talcherkar*, 10 Bom. L. R. 201).

But the examination should be strictly limited to the purpose of enabling him to explain any circumstances appearing against him in evidence :—(*Hargobinda Singh*, I. L. R. 14 All. 242; *Sagal Samba Sujao*, I. L. R. 21 Cal. 642; *Hossein Buksh*, I. L. R. 6 Cal. 96; *Hurry Ch. Chuckerbutty*, I. L. R. 10 Cal. 140 at p. 143; R. *Hawthorne*, I. L. R. 13 All. 345 : *Haris Chandra Talcherkar*, 10 Bom L. R. 201).

The examination of an accused person, *duly recorded* by or before the committing Magistrate, can be tendered by the prosecutor and read as evidence

under sec. 287, Cr. P. C. :—(*Gaung Gyi*, 4 L. B. R. 244).

Sec. 342 empowers a Court to examine an accused person to explain evidence already recorded :—(*Gaya Singh*, 5 C. W. N. 864).

Statement made by an accused person cannot be used to fill up gaps in the evidence for prosecution :—(*Basanta Ghattack*, I. L. R. 25 Cal. 49 ; *Mohideen Abdul Kadir*, 27 Mad. 238; *Gaung Gyi*, 4 L. B. R. 244).

Examination of an accused person in respect of his previous conviction is illegal :—(*Nazim*, 5 C. W. N. 670).

An accused is to be examined after some evidence against him has been recorded. Otherwise proceeding will be illegal :—(*Viran*, I. L. R. 9 Mad. 224). *See* also *R. Hawthorne*, I. L. R. 13 All. 345.

"Accussed" person in sec. 342 Cr. P. C., means an accused person under trial and under examination by Court : (*Durant*, I. L R. 23 Bom. 213); or person over whom a Magistrate or Court exercises jurisdiction: (*Mona Puna*, I. L. R. 16 Bom. 661).

The object of sec. 342, Cr. P. C., is not to convict the prisoner out of his own mouth but to supply him with an opportunity of putting his own knowledge of the facts at the service of the Court :—(*Hossein Bukas Sheik*, 6 C. L. R. 521 : s. c. I. L. R. 6 Cal. 96 ; *Chinibash Ghosh*, 1 C. L. R. 436 ; *Virabudra Gaud*, 1 Mad. H. C. R. 199); nor to cross-examine him with the apparent object of convicting him out of his own mouth of false statements and so as to make him prejudice himself in the matter with which he is charged :—(*Behari Lal Bose*, 6 C. L. R. 431, and *Hossein Bukas Sheik*, 6 C. L. R. 521 ; *Yakub Khan*, I. L. R. 5 All. 253).

S. 342, Cr. P. C., does not permit a Magistrate to submit the accused to an embarrassing and cruel series

of questions intended rather to puzzle the accused than to elucidate the case or to enable the accused to furnish an explanation as to the circumstances appearing in evidence against him :—(*Anant Narayan*, 6 Bom. L. R. 94).

It is improper on the part of a Judge when examining a prisoner under sec. 342 to cross-examine him :—(*Hurry Ch. Chuckerbutty*, I.L.R. 10 Cal. 140 : s. c. 13 C. L. R. 358 ; *Titu Mya*, 1 C. L. R. 436 ; *Hossein Buksh Sheik*, 6 C. L. R. 521 : s. c. I. L. R. 6 Cal. 96 ; *Sagal Samba Sujao*, I. L. R. 21 Cal. 642 ; R. *Hawthorne*, I. L. R. 13 All. 345).

Examination of an accused person cannot be used as additional evidence against himself or his fellow-prisoners, nor for connecting him with matters by which case against him might be strengthened, nor for eliciting facts which may prejudice him with the jury. Still less can it be used for the purpose of ascertaining what witnesses the accused intends to call or what evidence they will give or what his defence is ; (Mayne, 2nd Edn., p. 1000).

A Magistrate is not competent to examine an accused person as a preliminary proceeding and before evidence has been recorded :—(*Hossein Buksh*, I.L.R. 6 Cal. 96 : s. c. 6 C.L.R. 521 ; *Sagal Samba Sujao*, I. L. R. 21 Cal. 642 ; *R. Hawthorne*, I. L. R. 13 All. 345).

When the evidence for the prosecution does not establish any criminal charge, no examination under sec. 342, Cr. P. C. should take place :—(*Shama Sunker Biswas*, 10 W. R. Cr. 25). See *Viran*, I. L. R. 9 Mad. 224, *supra*.

But if a trying Magistrate examined the accused prematurely, at a time when no evidence sufficient to connect them with the crime, with the commission of which they were charged, had been recorded against them : it was held that although the Magistrate was wrong in so examinaing them, the statements, if

freely and voluntarily given, cannot be rejected as inadmissible in evidence on account of this irregularity of procedure; and that, *prima facie* as admission, these statements are relevant under sec. 21, Evidence Act.—(*Narayan*, Bom. H. C. Nov. 2, 1893; *Ram Chandra Chamar*, 4 W. R. Cr. 10).

Where an accused person was induced by the Police to make a confession of having taken part in the commission of an offence, and the committing Magistrate admitted it in evidence and examined the accused with respect to it and the accused admitted it: *Held*, that the accused being examined about a confession which was not admissible in evidence, the questions and answers to them could not be said to be duly recorded as the questions were such as were not allowed by the law to be put, and that the answers to these questions were not admissible in evidenee against the accused.—(*Gaung Gyi* 4 L. B. R. 244). The confession being admitted in evidence through the medium of these answers the confession was inadmissible in evidence.—(*Ibid*).

It is very undesirable that a Magistrate should examine an accused person when he is satisfied that the evidence for the prosecution does not disclose any proper subject of criminal charge against him :—[*Shama Sunker Biswas*, 1. B. L. R. (s. N.) 16 : s. c. 10 W. R. Cr. 25].

Questions must not be put to the prisoner in the middle of the case for the prosecution, so as to supplement it where defective :—(*Diaz.*, 3 Bom. H. C. R. 51 ; *Chinibash Ghose*, 1 C. L. R. 436).

The examination of the accused should be recorded in the manner prescribed by sec. 364, Cr. P. C.

Where a statement of an accused person is made before a committing Magistrate, the Magistrate's attestation is *prima facie* evidence, that the statement was made and the proceedings were regular :—(*Goshto Lal Dutt*, 15 W. R. Cr. 68 : s. c. 7 B. L. R. App. 62).

If the examination of an accused person, taken before the Magistrate, is afterwards read in evidence at the trial before the Sessions Court, the whole of it should be read out :—(5 Mad. H. C. R. Ap. iv., *Proceedings* Novem. 11, 1869).

Examination of the accused before the Magistrate must be given in evidence at the Sessions trial, whether it tells for or against the prisoner; and it is not in the discretion of the prosecution to put in the examination or not :—(*Sheik Meher Chand*, 13 W. R. Cr. 63).

The phrase "Committing Magistrate" in secs. 287 & 288 Cr. P. C. is merely a compendious way of referring to the Magistrate or Magistrates who held the preliminary enquiry on which the committal is made :—(*Malinja*, 3 M. L. T. 25).

The examination of an acaused person should be taken down in the language in which it is delivered, and, as far as possible, in the words used by him :—(*Moonsai Bibee*, 24 W. R. Cr. 54).

It is no objection to the admissibility of a confession that it was elicited by questions, if no undue influence be used :—(R. v. *Ellis*, Ry. & M. 432; R. v. *Thornton*, 1 Mood C. C. 27).

The verification of the examination of an accused person is not admissible in evidence—(*Rajani Kanta Koer*, 8 C. W. N. 22).

CONFESSION TO POLICE-OFFICERS.

The provisions of sec. 25, Evidence Act, which declare that no confession made to a police-officer shall be proved as against a person accused of any offence, apply to every police-officer and are not to

be restricted to the officers of the regular police force: [*Salemuddin Sheik*, I. L. R. 26 Cal. 569: s. c. 3 C. W. N. 393; *Rama Birapa*, I. L. R. 3 Bom. 12; *Hiran Miya*, 1. C. L. R. 21; *Haribole Chunder Ghose*, I. L. R. 1 Cal. 207 (F. B.); *Jagat Chunder Mali*, I. L. R. 22 Cal. 50].

A Deputy Commisioner of Police in Calcutta is a police-officer within the meaning of sec. 25, Evidence Act. Confession to him is inadmissible :—[*Haribole Chunder Ghose*, I. L. R. 1 Cal. 207 (F. B.)]

A police-patel is a police-officer within the meaning of secs. 25 and 26, and confession to him is inadmissible :—(*Rama Birapa*, I. L. R. 3 Bom. 12; *Bhima*, I. L. R. 17 Bom. 485).

A 'tenhouse gaung' appointed under the Lower Burma Village Act, 1889, is a police-officer within the meaning of sec. 25 of the Evidence Act, and an admission to him of the accused's guilt is inadmissible in evidence under the section.—(*Po Sin*, 3 L. B. R. 283 : s. c. 5 Cr. L. J. 421).

A chowkidar is a police-officer within the meaning of sec. 25. Confession made to him is inadmissible.—(*Salemuddin Sheik*, 3 C. W. N. 393 : s. c. I. L. R. 26 Cal. 569; *Indro Chandra Pal*, 2 C. W. N. 637; *Keta Baisnovi*, 2 C. W. N. clxxx).

But see *Bipin Behari Dey*, 2 C. W. N. 71. In this case Banerjee and Wilkins, JJ., held that a village chowkidar is not a police-officer within the meaning of secs. 25 and 26, Evidence Act. So a confession made by an accused person while in the custody of a chowkidar is admissible in evidence. [This case distinguishes *Haribole Chunder Ghose*, I. L. R. 1 Cal. 207 (F. B); *Bhima*, I. L. R. 17 Bom. 485]. Their Lordships observed that a village chowkidar's duties as defined in Act VI (B. C.) of 1870 are not the same as those of an ordinary police-

officer. He cannot hold any police enquiry; cannot arrest anybody except a proclaimed offender or anybody actually committing certain offences in his presence. Their Lordships referred to *Tatya* bin *Appaji*, I. L. R. 20 Bom. 795, in support of their view.

In *re Indra Chandra Pal*, 2 C. W. N. 637, which is a later case, O'Kinealy and Henderson, JJ., were not prepared to acquiesce in the decision of Banerjee and Wilkins, JJ., reported in *Bipin Behari Dey*, 2 C. W. N. 71, "which is solely based on the definition of chowkidar under Act VI (B. C.) of 1870. No reference in that case was made to Act I of 1892 which has amended the Act of 1870 in regard to the duties of a chowkidar, nor to Regulation XX of 1817 where he is described as a police-officer. He is certainly not a policeman in the sense of Act V of 1861."

Again, in *re Kalai*, 4 C. W. N. 252: s. c. I. L. R. 27 Cal. 366, Prinsep and Stanley, JJ., in deciding whether rescuing from the custody of a chowkidar is an offence under sec. 225, I. P. C., held that a chowkidar is not a police-officer within the terms of sec. 59, Cr. P. C., and accordingly set aside the conviction.

But see *Bahubal Sarkar*, 10 C. W. N. 287, where Pargiter and Woodroffe, JJ., have held that a village chowkidar is an officer subordinate to an officer in charge of a Police station within the meaning of sec. 56, Cr. P. C. and as such resisting a lawful arrest by a chowkidar is punishable under sec. 225B, I. P. C. In *Nazir Jharudar*, 9. C. W. N. 474, the question was raised but not decided. His Lordship the Chief Justice disposed of it with the following remark :—"I do not think, it is necessary to decide upon the present occasion and there seems to be a conflict of judicial view upon the subject in this Court whether a chowkidar is a police-officer within the meaning of sec. 26, Evidence Act."

A confession before a village Magistrate is not inadmissible; he being not a police-officer :—(*Sama Papi*, I. L. R. 7 Mad., 287).

When a police-officer has evidence before him sufficient to justify the arrest of an accused, he should not, preliminary to the arrest, examine him and record his statement. The evidence of the police-officer in regard to such statement cannot be regarded except as a confession to a police-officer and is inadmissible under sec. 25, Evidence Act, and is inadmissible against his co-accused :—(*Jadab Das*, 4 C. W. N., 129).

Statement of an accused, who was being taken from one place to another under a police escort, to a friend in temporary absence of such police escort, was held to be a statement made in " police custody " and disallowed :—(*Lester*, I. L. R. 20 Bom., 165).

Confession of guilt or admission of a criminating circumstance or statement suggesting an inference that the prisoner committed the crime, made to a police-officer while in police custody, should be excluded : [*Nand*, I. L. R. 14 Bom. 260 (F. B). See also *Hakiman*, 51 P. L. R. 1905 : s. c. 2 Cr. L. J. 230]. Such statements are not admissible under sec. 8. Expln. (1), Evidence Act, as evidence of "conduct." Sec. 8, so far as it admits a statement as included in the word "conduct" must be read in connection with secs 25 and 26 and cannot admit a statement as evidence which would be shut out by those sections :—(*Ibid*).

Confession of accused persons, made when in police custody, are only admissible in so far as they relate distinctly to the fact thereby discovered, and evidence of such confessions should not be allowed to be given or recorded to any great extent, nor, when such evidence as is properly admissible has been recorded, should the jury afterwards be told generally that the prisoners had confessed :—(*Acchabba Beori*, 3 M L. T. 263).

Confession made to a police-officer by an accused person while in police custody is inadmissible under secs. 25 and 26, Evidence Act :—(*Javecharam*, I. L. R, 19 Bom. 363).

The custody of the keeper of a jail in a Native State is not a custody of a police-officer merely because his subordinate warders are members of the police force of the State. In the absence of any suggestion of close custody in jail under sec. 26, Evidence Act, such jailor can give evidence of what the accused told him while in jail :—(*Tatya* bin *Appaji*, I. L. R, 20 Bom. 795).

A confession, while in police custody, to a first class Magistrate of a Native State, if duly recorded, is admissible in evidence under sec. 26, Evidence Act :—(*Nagla Kala*, I. L. R. 22 Bom. 235 ; *Sundar Singh*, I. L. R. 12 All. 595).

The words "police-officer" and "Magistrate" in sec. 26, Evidence Act, include the police-officers and Magistrates of a Native State as well as those of British India :—(*Nagla Kala*, I. L. R. 22 Bom. 235).

The accused was charged with killing her newborn baby. She made a certain statement to a police-constable on being assured that nothing would happen to her. This led to the discovery of something. Before the committing Magistrate she made some statement, which she withdrew before the Sessions Court. And she further alleged that the constable threatened her if she did not confess. *Held*, confession before the Magistrate is irrelevant and confession before the Sessions Judge was not made after impression caused by promise of constable had been fully removed :—(*Luchoo*, 5 N. W. P. 86).

Confession to a police-officer by one of the accused persons tried jointly may be proved by another accused person. Such confession is not to be received or treated as evidence against the person making it but simply as evidence on behalf of the other.

There is nothing in sec. 25, Evidence Act, to preclude this :—(*Pitamber Jina*, I. L. R. 2 Bom. 61).

In *Rama Birapa*, I. L. R. 3 Bom. 12, circumstances, rendering confession, objected to under secs. 24-26, Evidence Act, admissible, have been discussed.

A statement made to a police-officer by an accused person while in the custody of the Police, although intended to be made in self-exculpation and not as a confession, may be nevertheless an admission of a criminating circumstances ; and, if so, under secs. 25 and 26, Evidence Act, it cannot be proved against the accused :—[*Pandharinath*, I. L. R. 6 Bom. 34 ; follows *Amrita Govinda*, 10 Bom. H. C. R. 497 ; and followed by *Nana*, I. L. R. 14 Bom. 260 (F. B.)].

Under sec. 25, Evidence Act, a confession made to a police-officer is inadmissible in evidence except so far as is provided by sec. 27, Evidence Act. It is immaterial whether such police-officer be the officer investigating the case—the fact that such person is a police-officer invalidates a confession :—(*Hiran Miya*, 1 C. L. R. 21).

Incriminating statement by a prisoner to a police-officer is inadmissible :—(*Mathews*, I. L. R. 10 Cal. 1022).

An incriminating statement made to the Police, when nothing is discovered in consequence of it, cannot be admitted as evidence: —(*Farid* 111 P. L. R. 1906 : s. c. 4 Cr. L. J. 177 : s. c. 16 P. R. 1906 Cr.).

A confession made to a police-officer is inadmissible ; but it may be admissible for other purposes than as a confession, *e.g.* as an admission under sec. 18 against the person who made it, with regard to the ownership of the property in an inquiry held by the Magistrate under sec. 523, Cr. P. C. :—(*Tribhovan Manickchand*, I. L. R. 9 Bom. 131).

A statement to the Police by an accused that if certain other persons were sent for, he would see

that stolen property was traced and restored is not legal evidence to convict the accused of abetment of theft :—(*Bishen Dutt*, 2 A. L. J. 53 s. c. 2 Cr. L. J. 22).

A statement made by an accused to the Police as to how he came by the goods, which are alleged to be stolen property, cannot be used in evidence against him, when he is being tried for an offence under sec. 411 of the Penal Code :—(*Khuda Buksh*, 11 P. L. R. 1905).

Where a confession was held by the Court below, to be corroborated by the accused having pointed out to the police the place where certain acts were committed : *Held*, that evidence regarding it was not admissible under s. 27 Evi. Act, because no fact was discovered in consequence of the information given by the accused. The fact that a discovery was made in consequence of information received by the police from an accused person is admissible, and so much of the information given by the accused as led to such discovery, would be admissible. But a statement by the accused to the police that certain property had been stolen would not be admissible, as such statement is not connected directly with the discovery where there is nothing else to connect the property discovered with the offence.—(*Gaung Gyi* 4 L. B. R. 244 : s. c. 8 Cr. L. J. 62 : s. c. 14 Bur. L. R. 233).

Where an accused pointed out stolen property concealed in a pond and the prosecution alleged that the accused said to the police that he had buried the thing in the pond : *Held*, that the statements of the accused was inadmissible.—(*Kakasingh*, 155 P. L. R. 1908).

As a confession made to a police-officer cannot be proved against an accused person, a statement by a police-officer to that effect should not be placed on the Magistrate's record ; also a police-officer should not be permitted to depose that the accused had confessed to him even though the terms of the confession are not allowed to be proved. The system of veri-

fication introduced by Police circular condemned.—(*Radhe Halwai*, 7 C. W. N. 220).

Confession to a "Panchayet" is not excluded by provision of sec. 24, Evidence Act, on the ground that such statement had been caused by threat (*Mohan Lal*, I. L. R. 4 All. 46). But where a Panchayet was assuming an authority and leading the accused to believe that he had that authority, he comes within the meaning of s. 24 Evi. Act. Too restricted a meaning should not be placed on the words " person in authority."—(*Nazir Jharudar*, 9 C. W. N. 474).

A confession made by an accused before the Panchayet who only told the accused to speak the truth is admissible in evidence :—(*Jasha Bewa*, 11 C. W. N. 904).

A Panchayet is not a police-officer but he is a person in authority within the meaning of s. 24 Evi. Act :— (*Ibid*).

A police-officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such confession is legally admissible.—(*Dhurum Dutt Ojah*, 8 W. R. Cr. 13).

An admission obtained from a prisoner by persuasion and promises of immunity by the Police ought not to be received in evidence :—(*Bishoo Manjee*, 9 W. R. Cr. 16).

Meher Ali Mullick, I. L. R. 15 Cal. 589, gives instances of statement made by an accused person to a police-officer held to be admissible and inadmissible.

The following persons are "police-officer " :—

A *daroga* : (*Pancham*, I. L. R. 4 All. 198).

A Sub-Inspector of a *thannah* : (*Hiran Miya* 1 C. L. R. 21).

A Police Sub-Inspector : (*Pagaree Shaha*, 19 W. R. Cr. 51 ; (*Adu Shikdar*, I. L. R. 11 Cal. 635).

A Police constable: [*Macdonald*, 10 B. L. R. App. 2; *Pitambar Jina*, I. L. R. 2 Bom. 61; *Babu Lal*, I. L. R. 6 All. 509, (F. B.); *Pandharinath*, I. L. R. 6 Bom. 34].

A Police head-constable: (*Luchoo*, 5 N. W. P. 86).

A village Munsif in the Presidency of Madras is not a police-officer: (*Sama Papi*, I. L. R. 7 Mad. 287).

An *admission*, not being a confession of guilt, made by an accused person to a police-officer before arrest is admissible in evidence: (*Dabee Pershad* I. L. R. 6 Cal. 530: s. c. 7 C. L. R. 541). This case approves *Macdonald*, 10 B. L. R, App. 2. See also *Nabadwip Gossami*, 1. B. L. R. (O. S. C.) 15: s. c. 15 W. R. Cr. 71, in which it was held that the answer did not amount to a confession of guilt, but was a statement of facts, which, if true, showed that the prisoner was innocent.

In this connection see *re Mathews*, I. L, R. 10 Cal. 1022, and *Meher Ali Mallik* I. L. R. 15 Cal. 589, Field J., in his Evidence, p. 143, referring to these cases, says "from these rulings it would seem doubtful whether *Queen* v. *Macdonald* (10 B. L. R. App. 2) and *Empress* v. *Dabee Pershad* (I. L. R. 6 Cal. 530; s. c, 7 C. L. R. 541) should now be followed." In *Jadab Das*, 4 C. W. N. 129, it has been held that the evidence of a police-officer in regard to statements of an accused person, taken by a police-officer preliminary to his arrest, cannot be regarded except as a confession to a police-officer and is inadmissible under sec. 25, Evidence Act, and is inadmissible against his co-accused.

Statement made by a witness to, and taken down in writing by, a police-officer was admitted in evidence both to discredit the said witness and also as evidence against an accused person as corroborating his confession. Several extra-judicial confessions, one of which was made to his Superior Officer—were used against him. *Held* (by Full Bench), that having regard

to sec. 162 Cr. P. C. the document containing the statement of the said witness ought not to have been admitted or used in evidence against the accused; that the confessions were rightly admitted in evidence. *Per* Batty J :—It is not sufficient to render a confession irrelevant under s. 24 Evidence Act; that there may have been added to it a statement which has been improperly induced by threat or promise. In order to make a confession irrelevant it must be shewn that the confession itself was improperly induced :—(*Narayan Raghunath Patki*, 32 Bom. 111 : s. c. 9 Bom. L. R. 789).

It is the duty of the Judge, and not of the Jury to decide the point whether an accused person while making a confession was or was not in police custody as it is a matter which is necessary to prove in order to enable the confession to be admitted in evidence (sec. 298, Cr. P. C) and his omission to state to the Jury his finding on the point is not a misdirection and could not prejudice the accused.—(*Sankappa Rai*, 18 M. L. J. 66).

CONFESSION TO MAGISTRATE.

Confession made before a Magistrate but not properly recorded according to the provisions of Cr. P. C. : the High Court sent back the case to the Sessions Judge in order to take any evidence that might be forthcoming to prove the alleged confession before the Magistrate which as recorded was inadmissible; because it was not taken as prescribed by Cr. P. C, :—(*Pavadi* bin *Bassappa*, 2 Bom. H. C. R. 397, and *Ganu Bapu*, 398 *idem*).

A Magistrate acts without due discretion when, as a prosecutor, he holds out promises to prisoners as an inducement to them to confess :—(*Ramdhun Singh*, 1 W. R. Cr. 24).

If before formal accusation a person admitted a crime to a Magistrate after due warning, the admis-

sion is admissible against the party making it:—(*Ram Charan Chamar*, 4 W. R. Cr. 10).

A confession before a Magistrate, though retracted afterwards before the Sessions Court, is evidence against the maker: (*Jema*, 8 W. R. Cr. 40); but unsafe to convict without corroboration: (*Sofiruddin* 2 C. L. R, 132).

The practice of taking prisoners before Magistrates not having jurisdiction, for the purpose of getting a confession recorded is not desirable, but such a confession is legally admissible when duly proved:—(*Vahala Jetha*, 7 Bom. H. C. R. 56).

The mere standing by of the Magistrate when confession is being made to the Police is not sufficient:—(*Domun Kahar*, 12 W. R. Cr. 82).

A confession is not inadmissible because it is made to a Magistrate who recorded it and also who held subsequent judicial inquiry and committed to the Sessions: (*Lal Sheikh*, 3 C. W. N. 387); explains and distinguishes *Anuntram Singh*, I. L. R. 5 Cal. 954 (F. B.), *contra*.

A Magistrate may become disqualified from dealing with a case by reason of some previous action taken by him, but the character of the evidence and its admissibility cannot be affected. A confession freely and voluntarily made to a Magistrate and recorded under sec. 164, Cr. P. C., is admissible evidence:—(*Ibid*).

A confession made to a Magistrate does not become irrelevant merely because the memorandum required by law to be attached thereon by the Magistrate taking it has not been written in the exact form prescribed:—(*Bhairon Singh*, I. L. R 3 All. 338; *Fekoo Mahto*, I. L. R. 14 Cal. 539; *Anga Valayan*, I. L. R. 22 Mad. 15).

In the absence of any inference of prejudice a confession taken down in a simple narrative form,

instead of in the shape of question and answer, is admissible in evidence:—[*Munshi Sheikh*, I. L. R. 8 Cal. 616; *Titu Maya*, I. L. R. 8 Cal. 618n. (F. B.): s. c. 1. C. L. R. 1; *Fekoo Mahto*, I. L. R. 14 Cal. 539].

When a Deputy Magistrate was deputed by the District Magistrate under sec. 159, Cr. P. C., to hold an investigation into a case of murder and recorded the statements of the accused person: It was held that the statements were rightly rejected.—(*Bhairub Chunder Chuckerbutty*, 2 C. W. N. 702).

Where a Sub-Deputy Magistrate was deputed to verify certain statements made by an accused person in his examination before the Committing Magistrate, the statements made before the Sub-Deputy by the accused in the course of such verifications are inadmissible in evidence.—(*Rajani Kanto Koer*, 8 C. W. N. 22).

Statements recorded in the course of Police investigation under Chap. XIV by a Magistrate not being a police-officer, the provisions of sec. 164, Cr. P. C., must be observed and the statements of witnesses should be recorded in the manner provided by secs. 355—363 and confessions or admission of accused as provided by sec. 364, Cr. P. C.:—(*Ibid*).

A village Magistrate is not a police-officer and therefore confession to him is not inadmissible:—(*Sama Papi*, I. L. R. 7 Mad. 287).

Confession to a village Munsif is not inadmissible:—(*Rangi*, I. L. R. 10 Mad. 295).

The words "police-officer" and "Magistrate" in sec. 26, Evidence Act, include the police-officers and Magistrates of Native States as well as those of British India:—(*Nagla Kala*, I. L. R. 22 Bom. 235; *Sunder Singh*, I. L. R. 12 All. 595).

CONFESSION OF PRISONERS TRIED JOINTLY.

(SEC. 30, EVIDENCE ACT.)

General rule is that the confession of one man is wholly inadmissible as against any other. But sec. 30 of the Evidence Act is an exception to this rule.

The person whose confession is to be used must be a person who is *being tried.*

Therefore, if he has pleaded guilty, whether his sentence is immediately passed or deferred, his confession cannot be considered as against those who would take their trial : (*Venkatasami*, I. L. R. 7 Mad. 102 : *Pahuji*, I. L. R. 19 Bom. 195 : *Pirbhu*, I. L. R. 17 All. 524 : *Kalu Patil* 11 Bom. H. C. R. 146 : *Lakshmayya Pandaram*, I. L. R. 22 Mad. 191) ; but see *Chinna Pavuchi*, I. L. R. 23 Mad. 151, *contra.*

Nor can it be used if, from any cause, such as absence of a legal commitment, the confessing prisoner has to be dismissed from the proceedings : (*Jagat Chundra Mali*, I. L. R. 22 Cal. 50 at p. 72). But if his plea of guilty is not accepted, he is still being jointly tried with the rest.

He must be tried jointly with the others and therefore, necessarily, at the *same time* and for the *same offence* :—(*Sheikh Buxoo*, 21 W. R. Cr. 65).

Before a confession of a person jointly tried with the prisoner can be taken into consideration as against him, the confession must implicate the confessing person substantially to the same extent as it implicates the person against whom it is used: (*Belat Ali*, 10 B. L. R. 453, and *Mahesh Biswas*, 455n. *Idem* ; *Keshub Bhoonia*, 25 *W. R.* Cr. 8, and *Baijoo Chawdhury* 43 *Idem* ; *Ganraj*, I. L. R. 2 All. 444 and *Mulu*, 646 *Idem*). *Prabhu* 17 P. W. R. 1907 (Cr.) : s. c. 6 Cr. L. J. 141.

A confession cannot be expanded or extended to make it available for incriminating persons other than

the confessing accused.—(*Prabhu*, 17 P.W. R. 1907 (Cr.): s. c. 6 Cr. L. J. 141).

Statements, however criminating, which are intended by the prisoner to exculpate himself, or to reduce his guilt to something lower than that which is alleged against the others and against himself, cannot be taken into consideration against any one but himself :—(*Ganraj*, I. L. R. 2 All. 444, and *Mulu*, 646 *Idem*; *Jagrup*, I. L. R. 7 All. 646; *Noor Bux Kazi*, I. L. R. 6 Cal. 279; *Daji Narsu*, I. L. R. 6 Bom. 288).

Where two persons are accused of an offence of the same definition arising out of a single transaction, the confession of one may be used against the other though it inculpate himself through acts separable from those ascribed to his accomplice and capable therefore of constituting a separate offence from that of the accomplice :—(*Nur Mahomed*, I. L. R. 8 Bom. 223).

At a joint trial for the same offence, a conviction cannot proceed merely upon the uncorroborated confession of the co-accused :—(*Dosa Jiva*, I. L. R. 10 Bom. 231, and *Krishnabhat*, 319 *idem*).

Statement of co-accused is not technically *evidence* within the meaning of sec. 3, Evidence Act.: (*Bayaji Kom Andu* 14 Ind. Jur. N. S. 384: *Khandia* bin *Pandu*, I. L. R. 15 Bom. 66).

A conviction founded on such a confession alone is a case of *no evidence* and bad in law:—(7 Mad. H. C. R. App. 15, Proceedings, Jany. 24th, 1873. *Khandia* bin *Pandu*, I. L. R, 15 Bom. 66 : *Chunder Bhattacharjee*, 24 W. R. Cr. 42 : *Naga*, 23 W. R. Cr. 24).

Co-prisoner's confession is even much weaker than that of an accomplice or approver who gives his testimony on oath and is subject to cross-examination. In practice, an accomplice's evidence generally requires corroboration. Therefore much more so

should the statement of a co-accused be corroborated in material particulars by independent witnesses.—[*Jaffir Ali*, 19 W. R Cr. 57; *Kunko Leith*, 20 W. R. Cr. 1; *Sadhu Mundul*, 21 W. R. Cr. 69; *Ashutosh Chukerbutty*, I. L. R. 4 Cal. 483 (F. B.); *Dosa Jiva* I. L. R. 10 Bom. 231; *Ram Saran*, I. L. R. 8 All. 306; *Budhu Nanku* I. L. R. 1 Bom, 475]. And not by the testimony of accomplices or approvers: (*Mahesh Biswas*, 19 W. R. Cr. 16; *Malapa* bin *Kapana*, 11 Bom. H. C. R. 196; *Ram Saran*, I. L. R. 8 All. 306).

If there is no evidence or the other evidence is inadmissible, confession of the co-prisoner alone will not sustain conviction:—[*Ambigara Hulagu*, I. L. R. 1 Mad. 163; *Ashutosh Chukerbutty*, I. L. R. 4 Cal. 483, (F. B.)].

By the words "may take into consideration" in sec. 30, Evidence Act, the Legislature has given the Court a discretion only; (*Sadhu Mundul*, 21 W. R. Cr. 69, p. 71). *Khandia* bin *Pandu*, I. L. R. 15 Bom. 66, explains the meaning of "take into consideration."

The words "taken into consideration" in sec. 30 do not mean that the confession referred to in the section is to have the force of sworn evidence:—(*Nirmal Das*. I. L. R., 22 All. 445; and *Dammar* 448n. *idem*; *Khandia* bin *Tanau*, I. L. R 15 Bom. 66).

Sec. 30 must be read subject to the preceding sections on confession. Therefore, if a confession is inadmissible under secs. 24-26 and there is no discovery of facts resulting from such confession under sec. 27, it will be inadmissible under this section as against both the maker and his co-accused. If it is admissible against the maker, then it is admissible as well against others affected by it. If excluded by secs. 24-26, but some facts discovered in consequence of the statement, then so much of it as leads immediately to the discovery, being admissible

under sec. 27, is also admissible under sec. 30 against the maker and other co-accused if it is a *confession* on the part of the maker and affects himself and his co-accused.

Where an accused person makes a confession, the most that could be taken into consideration in such statement against a co accused would be under secs. 27 and 30 of Evi. Act. so much of the information as was the immediate cause of the discovery of some relevant fact against him.—(*Sankappa Rai* 18 M. L. J. 66).

In cases where several accused persons are being tried together on evidence which is not identical, it is of the first importance that the evidence affecting each should be clearly and carefully placed before the jury and that their attention should be prominently drawn to the considerations by which they may properly be guided in estimating the value of the evidence. To tell a jury generally that they "have the approver's deposition and the corroborative evidence" without pointing out, as regards each person, what the corroborative evidence is, is to give them no guidence at all, especially in a case where the principal evidence against most of the accused is that of an approver :—(*Jamiruddi Masali*, 6 C. W. N 553).

The statement of a person, tried jointly with other persons for the same offence, is not made less of an admission as to all that he knew concerning the offence affecting himself and the other persons, by the fact of the Court not thinking him guilty of the offence charged :—(*Bakur Khan*, 5 N. W. P. 213).

Confession of one prisoner cannot be used as corroborative evidence against another person. Corroboration as to details of the crime without corroboration as to the person of the accused, is worthless :—(*Durbaroo Dass Sirdar*, 13 W. R. Cr. 14).

Sec. 30, Evidence Act, is an exception, and its wording shews that the confession is merely to be

an element in the consideration of the evidence. Unless there is something more, a conviction on it will still be a case of no evidence and bad in law :— (7 Mad. H. C. R. App. 15 ; Proceedings, Jany. 24th, 1873).

Confessions made by accused persons at a joint trial cannot be treated as the evidence of accomplice against one another :—[*Ashutosh Chuckerbutty*, I. L. R. 4 Cal. 483 (F. B.) at pp. 494, 496].

A conviction based solely on the evidence of a co-prisoner is bad in law :—(*Ambigara Hulagu*, I. L. R. 1 Mad. 163 ; *Budhu Nanku*, I. L. R. 1 Bom. 475 ; *Bhawani*, I. L. R. 1 All. 664, and *Ram Chand*, 675 *idem*).

A confession of co-accused, if proved, is evidence of weakest kind and, if uncorroborated, not sufficient to warrant conviction :—[*Ashutosh Chuckerbutty*, I. L. R. 4 Cal. 483 (F. B.); *Manki Tewari*, 2 C. W. N.

A person, against whom confession of another is to be used, has a right to demand that it be strictly *proved* :—*Chunder Bhuttacharjee*, 24 W. R. Cr. 42).

Object of sec. 30, Evidence Act, is explained in *Chunder Bhuttacharjee*, 24 W. R. Cr. 42, and *Khandia* bin *Pandu*, I. L. R. 15 Bom. 66. By sec. 30 a confession may be "considered" as against other parties ; but when used as evidence requires corroboration and cannot be used as corroborating in any way the evidence of approvers against such other parties. Sec. 30 ought to be construed with great strictness and the confession of one person is not admissible in evidence against another although the two are jointly tried, if one is tried for abetment for which the other is on his trial : (*Jaffir Ali*, 19 W. R. Cr. 57 : *Badi*, I. L. R. 7 Mad. 579). But the explanation to sec. 30 which was inserted by Act III of 1891 alters the law and renders obsolete these rulings as offence now includes abetment or attempt.

Statements should not be considered under sec. 30, Evidence Act, when two sets of prisoners, although tried jointly, were tried upon totally different charges:—(*Khukree Ooram*, 21 W. R. Cr. 48, and *Bunwaree Lal*, 53 *idem*).

Confession of prisoners tried jointly for the same offence is evidence of a defective character and requires specially careful scrutiny before they can be safely relied on: (*Sadhu Mundul*, 21 W. R. Cr. 69). Apart from the infirmity inherent in accomplice's evidence they are not given on oath and are not liable to be tested by cross-examination:—(*Naga*, 23 W. R. Cr. 24).

When prisoners are tried jointly for offences which are separate but arise out of one transaction as offences under sec. 372 and sec. 373 (see *Karuna Boistabi*, I. L. R. 22 Cal. 164); or for offences which are *distinct* though cognate as dacoity and receiving stolen goods known to have been taken in a dacoity (see *Bala Patel*, I. L. R. 5 Bom. 63), or theft and receiving stolen property (see *Bishnu Banwar*, 1 C. W. N. 35)—Sec. 30, Evidence Act, has no application.

Statement by prisoner in the absence of co-prisoners and conviction on such confession is bad, confession being illegally admitted:—(*Chandra Nath Sirkar*, I. L. R. 7 Cal. 65; *Moti Kurmi*, 13 C. L. R. 275; *Lakshman Bala*, I. L. R. 6 Bom. 124).

When several persons are tried together, if confession of one prisoner is admissible in evidence, it should be taken into consideration as against all of them and not against the person alone who made it:—(*Rama Birapa*, I. L. R. 3 Bom. 12).

Statements by some of the accused, which do not amount to confessions, and which do not in any way incriminate them, are not admissible in evidence against any person other than those making them:—(*Taju Pramanik*, I. L. R. 25 Cal. 711).

A was charged under sec. 409 I. P. C., and B with its abetment and also upon an alternative charge under secs. 411 and 380, I. P. C., in respect of a document found in his house and entirely unconnected with the acts of criminal breach of trust with which A was charged. Both were tried together. A was convicted upon his own confession and plea of guilt. In his confession A implicated B and A's confession was used against B. B was convicted separately for the abetment of criminal breach of trust by A and also on alternative charges under secs. 411 and 380, I. P. C. *Held* B's conviction for abetment of the acts of A is bad in the absence of any corroboration of the confession of A relating to the specific acts of criminal breach of trust; the finding of the document in B's house cannot by itself form any such corroboration; that B was prejudiced by joint trial by reason of the confession of A having been used and treated as a substantial part of the evidence against him in support of the second charge;—(*Nikunja Behari* Roy, 5 C. W. N. 294).

Statement of accused persons, taken by police-officer preliminary to his arrest is a confession and inadmissible under sec. 25 and inadmissible against his co-accused:—(*Jadab Dass*, 4 C. W. N. 129).

The omission of the Sessions Judge to warn the jury that the statement of one prisoner is not evidence against his fellow-prisoners is a material error and a misdirection fatal to the trial notwithstanding that the Sessions Judge dealt with the evidence against evil of the prisoners separately.—(*Sourendra Nath Mitra*, 10 C. W. N. 153).

ACCOMPLICE.

Under the above head are included *approver*, *co-accused*, *informer*, *spy* and *abettor*.

According to sec. 133, Evidence Act, an accomplice is a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

The latter half of this section is to be taken into consideration along with the presumption of the Court mentioned in sec. 114 (*b*) of this Act, *viz.*, that an accomplice is unworthy of credit *unless he is corroborated in material particulars.*

Sec. 30 merely enacts a special exception to the general rule that a confession (admission) can be proved (only) against the person who made it. It does not limit the operation of s. 32. Illustration (*b*) to sec. 30 cannot be construed to have this effect.

Therefore, the confession of an accused who is dead, implicating himself and an accomplice in a crime, is admissible under sec. 32 (3) as a statement, which would expose him to a criminal prosecution. Not only that part of the statement, which is against interest is admissible, but all those parts of it which relate to connected facts, including the share taken by others in the crime.

Under secs. 110 and 133 Evidence Act, an accomplice is a competent witness, and the only limitation imposed on the general rule there stated is that involved in the application of sec. 334 (4) Cr. P. C. If the accused and the accomplice were being tried jointly, the accomplice could not be sworn and, therefore, could not be a witness against the co-accused. But if they were being separately tried, this prohibition would not apply. Therefore, an accomplice is a competent witness against a co-accused tried separately.—(*Nga Po Yin*, U. B. R. 1906 : s. c. 5 Cr. L. J. 300).

An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath.—(*Banu Singh* 10 C. W. N. 962 : s. c. 33 Cal. 1353).

So if the prosecution be withdrawn and the

accused discharged under s. 494 Cr. P. C. he would be a competent witness.—(*Ibid*).

An accomplice is unworthy of credit:—(*Luchmee Pershad*, 19 W. R. Cr. 43; *Maganlal*, I. L. R., 14 Bom. 115).

There is no rule or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. The credibility of a witness who says that he and another joined in committing an offence stands *per se*, as far as his self-accusation is concerned, on the same footing as that of a witness who says that he alone committed an offence, though in the latter instance, there would be a narrowed basis for cross-examination to test his own self-accusation.

What first must be decided is whether the witness in question is in truth an accomplice or is merely posing as an accomplice. When it is once established that he is an accomplice then the next practical question arises who are the other accomplices and it is at that stage, when his evidence implicating others has to be weighed, that when comes into application the maxim that it is unsafe to convict upon the evidence of an accomplice unless he is corroborated in material particulars both as to the circumstances of the offence and the identity of the person whom he implicates.—(*Hanmant Vasudeo Mulgund*, 6 Bom. L. R. 443).

Unsafe to convict on accomplice's evidence without corroboration on material particulars: (*Udhan Bind*, 19 W. R. Cr. 68: *Ram Saran* I. L. R. 8 All. 306; *Malhar Martan Kulkarni*, I. L. R. 26 Bom. 193). But this rule does not apply to all persons who technically come within the category of accomplices. The particular circumstances of each case will affect its application and no general rule can be laid down on the point.—(*Deonandan Pershad Singh*, 10 C. W. N. 669: s. c. 33 Cal. 649. See also *Upendrakumar Ghose*, 12 C. W. N. 140.

Accomplices are not like ordinary witnesses in respect of credibility, but their evidence is tainted and should be carefully scrutinized before being accepted. —(*Asan Mullick*, 2 C. W. N. 672).

Necessity for corroboration: [*Elahi Bux*, B. L. R. Sup. Vol, 459 (F. B.): s. c., 5 W. R. Cr. 80; *Gorachand Ghose*, 3 B. L. R. 2n. (F. B.): s. c. 11. W. R. Cr. 29; *Chutterdharee Singh*, 5 W. R. Cr. 59; *Imdad Khan*, I. L. R. 8 All. 120, and *Ram Saran*, 306 *idem*].

In *Baji Krishna*, 6 Bom. L. R. 481 :—

Per Crowe J :—However convincing the testimony of an accomplice may be of the facts necessary to be proved it has become a settled course of practice not to convict an accused person on the uncorroborated evidence of an approver, and the corroboration ought to consist in some circumstances that affects the identity of the accused person.

Per Chandravarkar, J.:—The corroboration required of the testimony of accomplices should go to some circumstances affecting the identity of the accused as participating in the transaction. Such corroboration ought to be that which is derived from unimpeachable or independent evidence as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices.

Per Aston J. : (*dissentiente*) :—There is no rule of law, or practice that the corroboration to the accomplice's evidence must be as to all details, or so complete as to in itself establish guilt. To set up such a rule would be to nullify the provisions of the law which admit of pardon to approvers in order to secure evidence for the Crown.

Misdirection, if Judge does not point out to the jury the danger of trusting such evidence: [*Elahi Bux*, B. L. R. Sup. Vol. 459 (F. B.): s. c. 5 W. R. Cr. 80; *Gorachand Ghose*, 3 B. L. R. 2n. (F. B.): s. c. 11 W. R. Cr. 29; *Chutterdharee Singh*, 5 W. R. Cr. 59;

4 Mad. H. C. R. App. 7. Proceedidngs, March 20th, 1868; *Sadhu Mundul.* 21 W. R. Cr. 69; *Karoo*, 6 W. R. Cr. 44; *O'Hara*, I. L. R. 17 Cal. 642 (F. B.); *Pestanji Dinsha*, 10 Bom. H. C. R. 75; *Nabi Baksh*, 2 C. W. N. 347].

An accomplice's evidence alone is not sufficient for conviction: [*Dwarka*, 5 W. R. Cr. 18 *Dwarka* and *Sookh Lall*, 1 Ind. Jur. N. S. 100; *Manki Tewari*, 2 C. W. N. 749; *Ashutosh Chackerbutty*, I L. R. 4 Cal. 483 (F. B.); 4 Mad. H. C. R. App. 7, Proceedings, March 20th, 1868].

Corroboration in matters directly connecting the prisoner with the offence is necessary :—(*Dwakra*, 5 W. R. Cr. 18; *Ram Saran*, I. L. R. 8 All. 306).

Corroboration must proceed from an independent and reliable source :—(*Baijoo Chowdhry*, 25 W. R. Cr. 43; *Balvant* v. *Pendharkar*, 11 Bom. H. C. R. 196; *Krishnabhat*, I. L. R. 10 Bom. 319).

An accomplice must be corroborated by independent evidence as to the identity of every person whom he impeaches :—(*Krishnabhat*, I. L. R. 10 Bom. 319; *Balvant* v. *Pendharkar*, 11 Bom. H. C. R. 196; *Budhu Nunku*, I. L. R. 1 Bom. 475).

Evidence obviously unreliable is not sufficient to corroborate the statements of either an accomplice or an approver.—(*Kaloop* 12 P. W. R. 1907 : s. c. 5 Cr. L. J. 437).

Evidence of one accomplice cannot be corroborated by his own previous statement, nor by his follew-prisoner's testimony :—(*Balvant* v. *Pendherkar*, 11 Bom. H. C. R. 196; *Baijoo Chowdhry*, 25 W. R. Cr. 43; *Dwarka* 5 W. R. Cr. 18; *Ram Saran*, I. L. R. 8 All. 306).

English practice should be followed as to the amount of corroboration required, *viz.*, not merely as to the circumstances of the case but also with regard to the identity of the prisoners :—(*Imam* valad

Baban, 3 Bom. H. C. R. 57; *Ganu*, 6 Bom. H. C. R. 57).

A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a witness after pardon was granted to him:—(*Nunhoo*, 9 W. R. Cr. 28).

A conviction proceeding upon the evidence of an accomplice is *not illegal* if jury credits such evidence: (*Ramasami Padayachi*, I. L. R., 1 Mad. 394; *Koa*, 19 W. R. Cr. 48). So also in *Gobardhan*, I. L. R. 9 All. 528 (F. B.), it has been held that if uncorroborated testimony is believed to be true, (considering all the circumstances), and it establishes the guilt of the prisoner, it is the duty of the Judge to convict him. Their Lordships referred to *Ramasami Padayachi*, I. L. R. 1 M. 394: *Hardeo Dass*, All. W. N. (1884) 286; and *Ram Saran*, I. L. R. 8 All. 306.

In *Ram Saran*, I. L. R. 8 All. 306, the Judges held that a conviction based on uncorroborated testimony is not illegal but unsafe without corroboration in material particulars. So in *Chagan Dayaram*, I. L. R. 14 Bom. 331, it has been laid down that a conviction is not illegal merely because it proceeds on uncorroborated evidence of an accomplice. The omission to follow the established rule of practice as to corroboration of such evidence does not constitute an error in law; but where the evidence of an accomplice is not of a character to warrant the refusal of a Court to apply to it the maxim enunciated in Illustration (*b*) of sec. 114, Evidence Act, a conviction based on such evidence alone would be of questionable propriety.

But in *Maganlal*, I. L. R., 14 Bom. 115, it has been laid down that a conviction on uncorroborated testimony is illegal. Their Lordships *per curiam* observed: "By the law both of India

and England the evidence of an accomplice is admissible and a conviction is not illegal because it proceeds upon the uncorroborated testimony of an accomplice (sec. 133, Evidence Act). But the presumption that an accomplice is unworthy of credit unless corroborated in material particulars has become a rule of practice of almost universal application. *Per* Scott, J., "In exceptional circumstances if a Magistrate believes accomplice's evidence and convicts, High Court should not interfere in the absence of cther circumstances shewing a want of judical discretion." This was followed in *re Smither*, I. L. R., 26 Mad. 1.

In a recent case reported in *Kamalaprasad*, 5 C. W. N. 517, their Lordships held tha talthough a conviction is not illegal, yet accomplice's evidence, ordinarily speaking, should be corroborated in material particulars and such evidence should be accepted with a great deal of caution and scrutiny.

Amount of corroboration required to the evidence of an accomplice must depend on circumstances:—(*Kala Chand Dass*, 11 W. R. Cr. 21; *Malhar Martand Kulkarni*, I. L. R., 26 Bom. 193).

Corroboration must be such as to fix the defendants individually with guilt:—(*Mohes Biswas*, 19 W. R.Cr. 16; *R.* v. *Farler*, 8 C. &. P. 106).

Corroboration should not only be as to the circumstances of the case but as to the identity of all the prisoners:—(*Imam* Valad *Baban*, 3 Bom. H. C. R. 57: *Krishnabhat*, I. L. R. 10 Bom. 319).

The accomplice must be corroborated not only as to one but as to all the persons affected by the evidence and corroboration of his evidence as to one prisoner does not entitle his evidence against another to be accepted without corroboration: (*Ram Saran*, I. L. R. 8 All. 306). This case gives instances which are not sufficient corroboration of the statement of an accomplice.

In *Shrinivas Krishna*, 7 Bom. L. R. 969. it has been held, that Section 133 of the Indian Evidence Act, 1872, is the only absolute rule of law as regards the evidence of accomplices. But there is a rule of guidance to which the court also should have regard: that rule of guidance is to be found in Ill. (*b*) to Sec. 114 of the Evidence Act.

Sec. 114 of the Ev. Act enacts a rule of presumption and read with sec. 4 of the Act, it indicates that this is not a hard and fast presumption, incapable of rebuttal, *a presumptio juris et de jure.*

The right to raise this presumption as to an accomplice is sanctioned by the Act and it would be an error of law to disregard it. What effect is to be given to it must be determined by the circumstances of each case.

The evidence of the accomplice requires to be accepted with a great deal of caution and scrutiny, because, among other things, he is likely to swear falsely in order to shift the guilt from himself. But this consideration hardly applies to the evidence of one who testifies that he has bribed the accused; for by his own testimony, so far from shifting the offence from himself, he in fact thereby fastens it upon himself, for it is by making himself out to be a briber that he shows another has been bribed.

The corroboration to the evidence of an accomplice, when required, should be such corroboration in material particular as would induce a prudent man on the consideration of all the circumstances to believe that the evidence is true not only as the narrative of an offence committed but also so far as it affects each person thereby implicated.

A Magistrate should not convict a person upon the evidence of witnesses who are no better than accomplices and whose evidence is not corroborated in material respects by other independent evidence in the case:—(*Jogendra Bhawmik*, 2 C. W. N. 55).

A Court refused to convict on the uncorroborated evidence of an accomplice who had previously been convicted of the same offence on her own confession: —(*Ramsodoy Chukerbutty*, 20 W. R. Cr. 19).

An accused was acquitted but arrested again pending appeal by Local Government. His co-accused was meanwhile apprehended and tried and the former's testimony was used against the latter. The Judges differed as to the propriety of admitting first mentioned accused's evidence against his co-accused :—(*Karim Baksh*, I. L. R. 2 All 386).

The confession of co-accused, if proved, is evidence against the accused, but it is of the weakest kind, and, if uncorroborated, not sufficient to warrant conviction :—(*Manki Tewari*, 2 C. W. N. 749 ; *Nazim*, 5 C. W. N. 670).

Where a Magistrate erroneously treated a witness as an accomplice and granted pardon, his evidence did not require corroboration :—(*Fattechand Vastachand*, 5 Bom. H. C. R. 85).

Where the Public Prosecutor with the consent of the Court withdrew from the prosecution of two out of several accused persons tried jointly for an offence under sec. 4, Gambling Act (Bomby Act IV, 1887) and the two accused were thereupon discharged under sec. 494, Cr. P. C., and then examined as witnesses for the prosecution : *Held*, that the persons so discharged were competent witnesses :—(*Hussein Haji*, I. L. R., 25 Bom. 422).

See also *Banu Singh* 10 C. W. N. 962 : s. c. 33 Cal. 1353. Where, however, the Court purporting to act under sec. 494 Cr. P. C. sanctioned the withdrawal of the prosecution, but omitted to record an order of discharge, and moreover the accused continued to be kept in custody : *Held*, that his position was in no way changed from that of an accused.

Quære—Whether the fact that the accused who was examined on oath was not actually tried along

with the other accused made his evidence admissible. —(*Ibid*).

It is genearlly unsafe to convict a person on the evidence of accomplices unless corroborated in material particulars. But in considering whether this general maxim does or does not apply to a particular case it must be remembered that all persons coming technically within the category of accomplices cannot be treated as on precisely the same footing : the nature of the offences and the circumstances in which the accomplices make their statement must always be considered. No general rule on the subject can be laid down :—(*Malhar Martand Kulkarni*, I. L. R. 26 Bom. 193).

A person who gives bribes is an accomplice of the person who receives them ; and while it is usually unsafe to convict a public servant of receiving bribes on the uncorroborated testimony of persons who say they have given them, the question as to the amount of corroboration depends on the circumstances of each case.—(*Ibid*).

The testimony of persons who have been compelled to pay illegal gratification has much greater probative force than that of an ordinary accomplice.—(*Upendra Kumar Ghose* 12 C. W. N. 140.)

Certain persons were charged with the murder of N. The confessional statement of one of them and the evidence of an approver showed that the accused first attacked N at a spot D ; that they then carried him from D to E and then from E to F where he was killed. Three other witnesses deposed to the presence of the accused at D. *Held*, that the evidence of the approver was sufficiently corroborated to justify a conviction : *Rex*, v. *Wilkes*, 7 C. & P. 272 : and *Elahi Bux*, B. L. R. Sup. Vol. (F. B.) 459, referred to :—(*Mohiuddin Sahib*, I. L. R., 25 Mad. 143).

DISTINCTION BETWEEN A SPY AND AN ACCOMPLICE.

For distinction between a spy and an accomplice, see the English cases *Rex* v. *Despard*, 28 State Trials, p. 489 ; *R.* v. *Mullins*, 3 Cox. C. C. 527 at p. 531.

An accomplice must be a person implicated in the guilt and must be liable to be punished : (*R.* v. *Stubbs*, 1 Dearsley C. C. 555).

An accomplice must be either *particeps criminis* or at least a person who could be put on his trial as abettor under sec. 107, I. P. C.

For different classes of accomplices, see *Plumer's case* in Foster's Crown Law, p. 352.

A witness who admits that he is cognizant of the crime of which he testifies and takes no means to prevent or disclose it, his evtdence is no better than that of an accomplice :—(*Chando Chandalini*, 24 W. R. Cr. 55).

To be accomplices they must be in the conspiracy or at least cognizant of the plot :—(*Mohesh Biswas*, 19 W. R. Cr. 16 at p. 20 ; *Chanda Chandalini*, 24 W. R. Cr. 55).

The action of a spy and informer in suggesting and initiating a criminal offence is itself an offence, the act not being excused or justified by any exception in the Indian Penal Code or by the doctrine which distinguishes the spy from the accomplice : (*Javecharam*, I.L.R., 19 Bom. 363) But the act of a detective in supplying marked money for detection of a crime cannot be treated as that of an accomplice : (*Ibid*). Followed *Mona Puna*, I. L.R. 16 Bom. 661.

Where a person was cognizant of a murder for

15 days without disclosing it, but not concerned in the perpetration of the murder itself, though assisted in removing the body to a pit. *Held* :—(*per* Sir Subrahmania Ayyar Offg. C. J and *per* Bhashyam Ayyangar J, on reference) that the witness was not an accomplice in the crime for which the accused was charged, inasmuch as he had not been concerned in the perpetration of the murder itself. Even assuming that, after the murder had been committed the witness had assisted in removing the body to the pit, and that he could have been charged with concealment of the body under sec. 201 I. P. C., that was an offence perfectly independent of the murder, and the witness could not rightly be held to be either a guilty associate with the accused in the crime of murder, or liable to be indicted with him jointly. The witness was therefore not an accomplice and the rule of practice as to corroboration had no application to the case. *Per* Boddam J :—Even if the witness was not an accomplice, having regard to the fact that he was cognizant of the crime for 15 days without disclosing it and that he had a cause of quarrel with the accused at the time when he did disclose it, it would be most unsafe to act upon his evidence unless it was corroborated in some material particular connecting the accused with the crime. The rule of practice as to the necessity for corroboration of the evidence of accomplice discussed.—(*Ramaswami Gounden*, 27 Mad. 271).

Mere consent of persons to be present at an illegal marriage or their presence in pursuance of such consent or the grant of accommodation in a house for the marriage does not necessarily constitute abetment of such marriage :—(*Umi*, I. L. R. 6 Bom. 126).

The evidence of the person who bribes is admissible against the person bribed :—(*Obhoy Churn Chukerbutty*, 3 W. R. Cr. 19).

Where certain persons accompanied another who was entrusted with and carried the money intended to be given as a bribe to the head-constable with knowledge that it was to be so paid and in order to witness and assist such payment: *Held*, that they were accomplices :—(*Asan Mullik*, 2 C. W. N. 672).

A person who offers a bribe to a public officer is an accomplice : (*Chagan Dayaram*, I. L. R., 14 Bom. 331 ; *Malhar Martand Kulkarni*, I. L. R., 26 Bom. 193). When the accomplices were persons who paid the bribe to a public servant accused under sec. 161 I. P. C.,—not of their free will but rather of necessity and particularly, when they did not strive to save themselves by throwing the blame for the offence upon the accused and further more it appeared that their guilt, such as it was, was not used as an instrument to induce them to give evidence : *Held*, that their testimony even without corroboration might justify the conviction of the accused. At any rate their evidence would require a much slighter degree of corroboration to establish their credit than would be the case if they were entirely voluntary accomplices in the offences which they spoke to.—(*Deonandan Pershad Singh*, 10 C. W. N. 669 : s. c. 33 Cal. 649).

Witnesses to the payment of bribes are not accomplices unless they co-operated in the payment of the bribes or were instrumental in the negotiation for the payment.—(*Ibid*).

An informer cognizant of an offence but omitted to disclose it for six days : Court was not prepared to say he was an accomplice but his testimony requires corroboration to justify conviction :—(*Ishan Chunder Chandra*, I. L. R., 21 Cal. 328).

Witnesses who have taken active part in carrying away a person after he had been grievously assaulted and was in a helpless condition and then leaving him in a field where he was subsequently found

dead : *Held*, that they are no better than that of an accomplice should be corroborated in material respects :—(*Alimuddin*, I. L. R , 23 Cal. 361).

Mere presence of a person on the occasion of giving of a bribe and his omission to promptly inform the authorities do not constitute him an accomplice unless it can be shewn that he somewhat co-operated in the payment of the bribe or was instrumental in the negotiation for the payment :—(*Deodhur Singh*, I. L. R., 27 Calc.. 144).

[This case distinguishes, *Chando Chandalini*, 24 W. R. Cr. 55 ; *Maganlal*, I. L. R.. 14 Bom. 115 ; *Chagan Dayaram*, I. L. R., 14 Bom. 331 ; *O'Hara*. I. L. R., 17 Cal. 642 (F. B.) ; *Ishan Chunder Chandra*, I. L. R. 21 Cal. 328 ; *Jogendra Bhawmik*, 2 C. W, N. 55 ; *Asan Mullick*. 2 C W. N. 672 ; *Alimuddin* I. L R., 23 Cal. 361].

Money paid for obtaining release of a person wrongfully confined by a police-officer cannot be regarded as illegal gratification but as money extorted. A money lender advancing money for such purpose cannot under the circumstances of the case be regarded as an accomplice of the police-officer :—(*Akhoy Kumar Chakrabutty*, 4 C. W. N. 755).

Kamala Prasad, 5 C. W. N. 517, draws a distinction between primary and secondary accomplices. The evidence of a secondary accomplice does not require so much corroboration as that of a primary accomplice.

When two persons take an active part in a murder they become principals in the first degree, though one of them only may have been actual killer. If any one stood by whilst the crime was being committed, he would be an abettor :—(*Jan Mahomed* v. *Kamoo Gazee*, 1 W. R. 49).

A participator in the crime is an accomplice in the primary sense.

A person who is an accomplice by implication is an accomplice in the secondary sense.

S & S^1 went together to bribe J & J^1 (head-constable and writer-constable respectively) G & K went with S & S^1 and the money was paid in their presence: *Held*, that the evidence of S^1 & K (G's evidence was discarded by the Magistrate himself) was no better than that of an accomplice :—(*Jogendra Bhawmik*, 2 C. W. N. 55).

O was tried for murder. G & M accompanied O and were close to O when the latter fired the fatal shot. G was standing within 3 yards, saw O load and aim at the deceased and fire the fatal shot. G did not interfere to prevent the deceased being so treated: *Held*, that G was an accomplice :—[*O' Hara* I. L. R., 17 Cal., 612 (F. B.)].

M & M^1 were charged with taking bribes. Their conviction rested on the evidence of persons who had either subscribed to the bribery or collected the subscription or paid the money over to the accused: *Held*, that the offerers of bribes are abettors and that they are accomplice-witnesses whose evidence ought to be scrutinized very carefully :—(*Maganlal*, I. L. R., 14 Bom. 115).

A Salt and Abkari Inspector was tried on a charge of extortion and bribery. The evidence against him was that of A, who consented to give the bribe; of B, who paid the bribe by A's order and in A's presence; of C & D, who witnessed the transaction without taking any part in it; and of E who was the writer of the entries which had been made after the alleged transaction was over. The Sessions Judge in his charge to the jury said that A and B were certainly accomplices and that C, D and E, had put themselves practically in the same position as accomplices and that their evidence also required corroboration before the jury could act on it. The jury returned a verdict of not guilty and the Ses-

sions Judge acquitted the accused. Upon an appeal being preferred by the Public Prosecutor against the acquittal, on the ground of misdirection: *Held*, that as regards A & B the charge was accurate, but that the description of C, D, & E was misdirection.—(*Smither*, I. L. R., 26 Mad. 1).

APPROVERS.

(Sec. 337, Cr. P. C.).

The evidence of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on in a Court of law:—(*Reaz Ali*, 6 W. R. Cr. 77).

The evidence of an approver is not sufficient to convict a person charged with an offence without being corroborated: (*Tulsi Dosad* 3 B. L. R. A. Cr. 66; *Issen Mundle*, 3 W. R. Cr. 8; *Nawab Jan*, 8 W. R. Cr. 19; *Rum Sagor*, 8 W. R. Cr. 57; *Nunhoo*, 9 W. R. Cr. 28; *Chirag Ali*, 12, W. R. Cr. 5).

The corroboration should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does:—(*Bykunt Nath Banerjee*, 10 W. R. Cr. 77; *Mohesh Biswas*, 19 W. R. Cr. 16).

Approver's testimony as to the identity of the accused must be corroborated by independent evidence. A co-prisoner's confession is not sufficient corroboration: (*Budhu Nanku*, I. L. R., 1 Bom, 475). Corroborative evidence in respect of the identity of each of the accused is necessary: (*Baldeo* I. L. R. 8 All. 509; *Ram Saran*, I. L. R. 8 All. 306; and *Bipin Biswas*, I. L. R. 10 Cal. 970).

Exact correspondence in details of several statements made by an approver in the course of a trial is not corroborative evidence such as is ordinarily

required to make it safe to convict a particular prisoner :—(*Bipin Biswas* I. L. R., 10 Cal. 970).

If conditional pardon is withdrawn, an approver's deposition before the committing Magistrate should not be allowed against his accomplices on their trial before the Sessions Court :—(*Joyuddee Paramanick*, 7 C. L. R. 66 ; *Nanha Malla*, 13 C. L. R. 326).

If a Judge in his summing up points out to the jury the desirability of corroboration of the evidence of an approver and the jury find the prisoner guilty on the uncorroborated testimony of the approver and the Judge accepts the verdict and convicts the prisoner, conviction is not bad : (*Mahima Chunder Dass*, 15 W. R. Cr. 37 ; *Elahee Buksh*, 5 W. R. Cr. 80 ; *Nawab Jan*, 8 W. R. Cr. 19 . But see 4 Mad. H. C. R. 22, Proceedings, March 31, 1868.

There is no rule of law which prevents the admission without corroboration of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to the same charge as the accused :—(*Rajoni Kant Bhoomick*, 13 W. R. Cr. 24).

If conditional pardon is withdrawn, the approver should not be put on his trial with other prisoners there and then. His trial should be separate and subsequent to his co-accused's trial : (*Mulua*, I. L. R. 14 All. 502 ; *Sudra*, I. L. R., 14 All. 336 ; *Rama Tevan*. I. L. R., 15 Mad. 352 ; *Bhau*, I. L. R., 23 Bom, 493 ; *Jagat Chunder Mali*, I. L. R., 22 Cal. 50 ; *Nga Po Huan*, 4 U. B. R. Crim. Proc. 7).

The withdrawal of conditional pardon should be by the authority that granted it :—(*Manick Sarkar*, I. L. R., 24 Cal., 492).

Before approver's evidence could be treated as evidence against the accused the latter must be given opportunity to cross-examine him :—(*Joyuddee Paramanick* 7 C. L. R. 66; *Nanha Malla* 13 C. L.

R. 326 ; *Rama Tevan* I. L. R. 15 Mad. 352 ; *Jagat Chunder Mali*, I. L. R. 22 Cal. 50).

Where several accused persons are being tried jointly for the same offence and some of them plead guilty, it is unfair to defer convicting those who have pleaded guilty merely in order that their confession may be recorded against the other accused :— (*Paltua* I. L. R., 23 All. 53 ; *Pahuji*, I. L. R, 19 Bom. 195 ; *Lakshmayya Pandaram*, I. L. R. 22 Mad. 491 ; *Pirbhu* I. L. R. 17 All. 524; *Chinna Pavuchi* I. L. R., 23 Mad 151).

Mohiuddin Sahib, I, L, R,. 25 Mad. 143, gives an instance where approver's evidence was considered as sufficiently corroborated to justify conviction : (See *Accomplice*).

A Session Judge in laying the evidence of an approver before the jury stated in his charge : "If you think that the approver's story is worthy of credit in itself, you have to consider whether it has been corroborated on material points" and then, after describing what in his opinion were " the points of corroboration," told the jury that " the above are the points on which the evidence has been corroborated and that corroboration is full and complete, if you believe it. You have to consider those points and decide, whether the approver has been corroborated in material points, and, if you find that to be so, then you have in his story sufficient evidence to connect all three accused with the crime." *Held*, that this was not a proper way to place the case before the jury. The Sessions Judge should have told the jury that although the law permitted them to convict on the uncorroborated evidence of an accomplice, it was not the practice of our Courts, which have consistently held that it was not safe or proper to convict on such evidence without some corroborotion sufficient to connect each of the accused with the offence committed. With this caution the Sessions Judge should have laid before

the jury the evidence corroborating the statement of the accomplice. The nature of the corroborative evidence must be confirmatory of some of the leading circumstances of the story of the approver as against the particular prisoner. Circumstances under which a new trial should or should not be ordered on account of a defective summing up with reference to the weight of evidence, pointed out.—(*Jamiruddi Masalli*, I. L. R. 29 Cal. 782).

The evidence of an accused person who has confessed and has been admitted or is likely to be admitted as an approver and who has been detained in police custody up till the time of trial, is open to the greatest suspicion that the Police have arranged his statements so as to fit in with any evidence that they may have obtained.—(*Amir Khan*, 7 C. W. N. 457).

A case in which the High Court acquitted a person who had been convicted by the lower Court of dacoity on the evidence of an approver who had been in police custody up till the time of trial and where other evidence corroborating the same was found to be too weak to support a conviction :—(*Ibid*).

The utmost caution is necessary in admitting or using the evidence of an approver. It not only requires corroboration in material particulars for its use, but its evidentiary value depends immediately upon the circumstances under which his evidence is tendered.—(*Banu Singh*, 10 C. W. N. 962 : s. c. 33 Cal. 1353).

The Local Government has no power to offer a conditional pardon to an accused, within the meaning of secs. 337, 338 Cr. P. C. (*Paban Singh*, 10 C. W. N. 847 ; *Banu Singh*, 10 C, W. N. 962) : The evidence of an accused taken under a conditional pardon so offered is wholly inadmissible.—(*Paban Singh*, 10 C. W. N. 847).

When a Deputy Commissioner tries a case exclusively triable by the Court of Sessions under s. 30

Cr. P. C., he does so as a Magistrate, and if he tenders conditional pardon to one of the accused, he is precluded from trying the case himself.—(*Ibid*).

If an accomplice, after grant of conditional pardon, gives full and true story of the crime before the committing Magistrate and repeats the same before the Sessions Court but in his cross-examination there resiles from his statement, the presiding Sessions Judge has no authority under the Code of Criminal Procedure to order him to be committed for trial for the offence in respect of which a pardon had been tendered to him. (See. sec. 339 Cr. P. C. and *Kothia* valad *Navalya Bhil*, 30 Bom. 611 : s. c. 8 Bom. L. R. 740).

Where a pardon was tendered by a Magistrate to an accused person after he had had an opportunity as an accused person of cross-examining the witnesses for the prosecution, and on its appearing that he had not made a full and true disclosure of the facts of the case such pardon was withdrawn and he was committed along with his co-accused to the Court of Session. *Held*, that the commitment was not open to objection. (*Brij Narain Man*, 20 All. 529 followed).—(*Budhan* 29 All. 24).

An accomplice to whom the Local Government has made a promise not to prosecute and by whom the promise has been accepted, after the commencement of the trial, is not a competent witness. Such grant of pardon does not alter the position of the accomplice as an accused person, and make him cease to be an accused person. No oath could be administered to him.—(*Alladad*, 9 P. R. 1906 Cr. : s. c. 4 Cr. L. J. 282).

The tender of a pardon by Local Government though of doubtful validity in law can in no way be regarded as an inducement or threat illegally held out to an accused person to disclose or withhold any matter within his knowledge.— (*Banu Singh*, 5 C. L. J. 224).

[*Banu Singh* reported in 10 C. W. N. 962: s. c. 33 Cal. 1353, was decided by Mitra and Holmwood JJ. in January 18, 1906. Their Lordships ordered retrial of the prisoner holding that the evidence of a certain accused person was inadmissible as, though the latter's prosecution was withdrawn by the public prosecutor, the Court omitted to record his discharge. On retrial the accused was acquitted and the Government appealed against this acquittal. The appeal was heard by Brett and Gupta JJ. and the judgment was delivered on 11th December, 1906. Their Lordships held that the person was a competent witness and his evidence was admissible, even though no formal order of discharge was recorded.]

An accused person who accepts a pardon forfeits his pardon by wilfully concealing a material fact or by giving false evidence. If this is clearly shown to be the case after the accused has given evidence in the preliminary inquiry, it is not necessary that he should be examined in the Sessions Court and, consequently, his incriminating statement may be used against him, although he has not been so examined.—(*Nga Po Huan*, 4 U. B. R. Crim. Proc. 7).

To commit the approver for trial on evidence taken before he was put back into the dock without re-examining the witnesses or giving him an opportunity of cross-examining them is an irregularity that is calculated to prejudice the accused.—(*Ibid*).

Under sec. 337 Cr. P. C. pardon had been tendered to, and accepted by an accomplice. The Magistrate who tried the persons implicated by the accomplice, examined the latter as a witness in that case, and, finding that his evidence was unreliable and that his statement, as approver, was not sufficiently corroborated, cancelled the pardon and ordered him to be tried for the offence of dacoity, in which, on his own statement as approver he had taken part. At his trial thereon in the present case he pleaded before the Magistrate that his pardon could not be said to have been forfeited

under see 339 of the Code as he had not failed to comply with the conditions on which the tender was made, but the Magistrate convicted him without any reference to the question raised by him: *Held*, (following 31 P. R. 1905 Cr.) that there can be no such thing, under the present Crim. Proc. Code, as cancellation or withdrawal of a pardon once tendered and accepted; but, under sec. 339. such a pardon can be forfeited by a person who had accepted tender of it, if either by wilfully concealing any thing essential, or, by giving false evidence, he did not comply with the conditions on which the tender had been made and he may be tried for the offence in respect of which the pardon had been tendered only if the pardon had been so forfeited. The question, therefore, whether the previous pardon to the accused had been forfeited by him is to be tried as a preliminary issue and decided by the Court, before which he is put on his trial, and, until it is disposed of against the accused, he cannot be tried and convicted for the offence for which he received the pardon.—(*Bahadur*, 59 P. R. 1905 Cr.)

Held, by the F. B. [Chatterji and Johnstone, JJ. concurring with the opinion of Clark, C. J., as expressed in the order referring the case to the F.B.; Kensington and Reed, JJ., *dissentiente*,] that, when a pardon has been tendered and accepted by a person under sec. 337, Cr. P. C. and a statement is made by him before a Magistrate which is materially incomplete or false, and he is subsequently tried for the offence of which pardon was granted to him, without being examined as a witness under sec. 337 (2) of the code: the statement made by him is admissible in evidence against him at his trial for the offence.—(*Suba*, 153 P. L. R., 1905: s. c. 41 P. R. 1905 Cr.)

In a case, triable exclusively by the Court of Sessions, an approver was offered pardon on the condition of his making a true statement of facts of the case. The approver accepted the pardon and made a statement which he afterwards retracted. The Sessions

Judge, trying the case, ordered the approver to be committed to the Court of Sessions for not fulfilling the condition on which the pardon was granted. It was contended that the pardon could be withdrawn by the District Magistrate only and therefore the commitment by order of the Sessions Judge was illegal. *Held*, that the contention had no force. The Sessions Judge was competent to order the approver to be committed to the Court of Sessions when he was of opinion that he had forfeited the pardon. No withdrawal of pardon is necessary before the approver is ordered to be tried for the original offence in respect of which the pardon was granted.—(*Kadu*, 176 P. L. R., 1905.)

RETRACTED CONFESSION.

No conviction should be based on retracted confession without independent corroborative evidence:—(*Rangi*, I. L. R. 10 Mad. 295; *Bharmappa*, I. L. R. 12 Mad. 123; *Mahabir*, I. L. R. 18 All. 78; *Nazim*, 5 C. W. N. 670; *Safiruddin*, 2 C. L. R. 132; *Jadab Das*, I. L. R. 27 Cal. 295: s. c. 4 C. W. N. 129; *Amanullah*, 12 B. L. R. Ap. 15: s. c. 21 W. R. Cr. 49; *Raru Nayar*, I. L. R. 19 Mad. 482).

The conviction of an accused based chiefly on his confession which was made before a third class Magistrate and retracted at the inquiry was set aside.—(*Jafar*, 140 P. L. R. 1905).

It is not safe to convict an accused person on his retracted confession standing by itself uncorroborated.—(*Chandan*, 3 P. W. R. 1907 Cr.).

A retracted confession may be used against the person making it, but not against others accused jointly with him.—[*Chit Singh*, 28 P. W. R. 1907 (cr.)].

Confession made and retracted must always be open to suspicion: [*Karuna Boistabi*, I. L. R. 22 Cal. 164; *Q.* v. *Thompson*, 2 Q. B. 12 (1893)].

Retracted confession is not inadmissible :—(*Mahabir*, I. L. R. 18 All. 78; *Maiku Lal*, I. L. R. 20 All. 133).

Retracted confession is sufficient for conviction if Court is satisfied that it was voluntarily made and true :—(*Mongola*, 6 W. R. Cr. 81 ; *Bhuttun Rujwun*, 12 W. R. Cr. 49; *Jema*, 8 W. R. Cr. 40 ; *Balvant* v. *Pandharkar*, 11 Bom. H. C. R., 137; Bom. H. C. Cr. Rulings. 25th April, 1889 ; *Gharya*, I. L. R. 19 Bom. 728 ; *Maiku Lal*, I. L. R. 20 All. 133 ; *Raman*, I. L. R. 21 Mad. 83 ; *Gangia*, I. L. R. 23 Bom. 316).

A mere subsequent retractation of a confession which is duly recorded and certified by a Magistrate is not enough in all cases to make it appear to have been unlawfully induced :—(*Basvanta*, I. L. R. 25 Bom. 168).

A retracted confession should carry practically no weight as against person other than the maker and requires far more corroboration than would be necessary for the sworn testimony of an accomplice on oath :—(*Nazim*, 5 C. W. N. 670).

There is no rule of law that a retracted confession cannot be treated as evidence unless corroborated in material particulars by independent reliable evidence :—(*Gangia*, I. L. R. 23 Bom. 316 ; *Raman*, I. L. R. 21 Mad. 83 ; *Gharya*, I. L. R 19 Bom. 728).

It is a misdirection if a Judge directs so : (*Gangia*, I. L. R. 23 Bom. 316 ; *Raman*, I. L. R. 21 Mad. 83).

In *Bhagi Vedu*, 8 Bom. L. R. 697. :—

Per Aston, J. :—A Judge ought to be satisfied that a confession was voluntarily made before it can be even admissible in evidence.

Per Beaman, J. :—A Judge should in the first instance see whether a retracted confession is voluntary, or has been improperly induced. The mere fact that a prisoner puts in a plea of not guilty and denies having made the confession or explains having made it by allegation of police torture, is enough in itself to put a Judge upon enquiry. And he then has to decide

before admitting the confession at all, or allowing it to be looked at, whether it has been improperly induced. That is a question for the Court, *i. e.* the Judge to answer *in limine*. If upon weighing all the circumstances, the prisoner's denial and the probabilities, it appears to the Judge that the confession has been improperly induced, no matter how true it may be, he is bound to exclude it. If he comes to the conclusion that it is not improperly induced and admits it, it then becomes evidence and liable to be appreciated and weighed with the rest of the evidence in the usual way.

Confession made before a Magistrate and retracted before the Sessions Court is evidence against the accused :—(*Jema*, 8 W. R. Cr. 40).

A confession made before a Magistrate but retracted when it was read out to him does not amount to a confession though plea of ill-treatment of the accused by the Police found to be untrue upon inquiry :—(*Garbad Bechar*, 9 Bom. H. C. R. 344).

A retracted confession should not necessarily be rejected if there is no evidence on record to support the confession. The credibility of such confession in each case is a matter for the Court to decide according to the circumstances of each particular case. If the Court is of opinion that confession is true, he is bound to act as far as the person making it is concerned on that belief :—(*Maiku Lal*, I. L. R. 20 All. 133).

Confession extracted after keeping the accused under Police custody for some time : retracted at the preliminary inquiry and before the Sessions Court: confession at variance with evidence : conviction was set aside :—(*Motijan Bibee*, 6 C. W. N. 380).

Statements of witnesses before committing Magistrate and retracted at the Sessions and alleged to have been obtained after restraint at the hands of the Police : *Held*, that the Sessions Judge should not admit such

evidence without first making some inquiry into the truth of the allegation made:—(*Jadab Das*, 4 C. W. N. 129).

Unless there is something to corroborate or shew the truth of the former statement, it should not be preferred to the statement made subsequently at the Sessions Court:—(*Jadab Das*, 4 C. W. N. 129; *Amanulla*, 21 W. R. Cr. 49: s. c. 12 B. L. R. Ap. 15).

Where there are two sets of evidence, neither of which can alone be accepted without corroboration, they cannot each in its turn be taken to corroborate the other and joined together so as to justify any Court in acting in such evidence:—(*Jadab Das*, 4 C. W. N. 129).

When confession is retracted and allegation is made against the Police extorting it under pressure; it is the duty of the Sessions Judge to examine all the police-officers who came in contact with the prisoner in getting the confession:—[*Madar*, All. W. N. 59 (1889); *Balapa* bin *Dasappa*, Bom. H. C, 3rd December, 1898].

When retracted confession of an accused is tendered in evidence in a jury trial, Sessions Judge's duty is to determine the question of its admissibility under sec. 298, Cr. P. C.;—(*Genu* bin *Mathaji*, Bom. H. C., 27th February, 1896).

A retracted confession may be taken into consideration, *i. e.* used as evidence, not only as against the person making it, but as against persons tried jointly with the confessing accused for the same offence. As regards the person making it, a retracted confession may, even without any corroborative evidence, form the basis of a coviction. As regards other co-accused although corroborative evidence may be necessary, it is not necessarythat such corroborative evidence should by itself be sufficient to

support a conviction; and *semble* that the conviction based upon the unsupported evidence afforded by the confession of a co-accused would not be unlawful.—[*Kehri*, 29 All. 434: s. c., 4 A. L. J. 310: s. c. A. W. N. (1907) 140: s. c. 5 Cr. L. J. 360.]

Where the accused's own confession is the only evidence against him, accounting for commission of the crime with which he is charged, it must be accepted, in so far as it is not inconsistent with reason and other surrounding circumstances.—(*Gopal Singh*, 19 P. W. R. 1907 (Cr.): s. c. 6 Cr. L. J. 260].

SEC. 288, CR. P. C.

Evidence brought in under sec. 288, Cr. P. C., cannot be accepted as proper corroboration of a confession, made to a Magistrate and retracted at the Sessions trial, especially when that confession was not fairly obtained and was not voluntary:—(*Jadab Das*, 4 C. W. N. 129; *Rangi*, I. L. R. 10 Mad. 295).

Under sec. 288, Cr. P. C., evidence taken before committing Magistrate may be treated as evidence at the trial in the Sessions Court, but conviction based on such evidence alone, especially when it is retracted before the Sessions Court would not be justified:—(Bom. H. C., 4th March, 1897).

A retracted confession cannot be corroborated by admitting evidence, under sec. 288, of witnesses given before a Magistrate but retracted at the Sessions:—(*Rangi*, I. L. R. 10 Mad. 295; *Bharmappa*, I. L. R., 12 Mad. 123).

Statement of an approver before a Magistrate is inadmissible as evidence against the accused under sec. 288, Cr. P. C., in the Sessions trial after he had retracted that statement and pardon cancelled; as his former statement is admissible only against him-

self :—(*Joyuddee Paramanick*, 7 C. L. R. 66; *Nanha Malla*, 13 C. L R 326; *Fateh*. I. L. R. 5 All. 217; *Jagut Chunder Mali*, I. L. R. 22 Cal. 50).

Where a witness makes a statement to a Police-officer or to an investigating Magistrate it is no evidence against the accused even if the statement before the investigating Magistrate be made in presence of the accused ; for sec. 288 Cr. P. C. does not apply to the case as it is not one made before a committing Magistrate holding an enquiry under Chap. XVIII of the Code. A direction by the Judge that such statement is strong evidence against the accused is clearly a serious misdirection.—(*Sankappa Rai*, 18 M. L. J. 66).

DISCOVERY RESULTING FROM INADMISSIBLE CONFESSION.

(Sec. 27, Evidence Act.)

Sec. 27, Evidence Act, provides that when a statement has been inadmissible under secs. 25 and 26, Evidence Act, or under sec. 162, Cr. P. C., so much of any information given in that statement as relates to any fact discovered thereby is admissible :—[*Nana*, I. L. R. 14 Bom. 260 (F. B.); *Chena Nashya*, 2 C. W. N. 257 : s. c. I. L. R. 25 Cal. 413]. Sec. 27 is not merely a proviso to sec. 26 but also to sec. 25 ;—[*Babu Lal*, I. L. R. 6 All. 509 (F. B.); *Adu Shikdar*, I. L. R. 11 Cal. 635; *Kamalia*, I, L. R. 10 Bom. 595 ; *Nana*, I. L. R. 14 Bom. 260 (F. B)].

Sec. 27 also qualifies sec. 24 : [*Babu Lal*, I. L. R. 6 All. 509 (F. B.) at p, 545] ; see Taylor's Evidence, §§ 902, 903. But see *Rama Birapa*, I. L. R 3 Bom. 12 ; *Luchoo*, 5 N, W. P. 86, *contra*. (It is to be noted that there are no Calcutta or Madras Rulings on this point.)

It follows therefore that although a confession may be inadmissible in consequence of undue influence

. 24); or because it was made to a police-officer (sec. 25); or it was made when in police custody and not in immediate presence of a Magistrate (sec. 26); yet if any fact deposed to as is discovered in consequence of such confession, so much of it as *relates distinctly to the fact thereby discovered* may be proved under sec. 27.

Operation of sec. 27 is restricted to information from "a person accused of any offence, in the custody of a police-officer." That is to say it must be from a person who is an *accused* person and at the same time in the *custody* of a police-officer. It would seem that unless these two facts, *viz.*, that a person must be both *accused* and *in police custody*, are co-existent, at the time of making confession, even though a discovery may be made in consequence of any statement, that statement cannot be proved under sec. 27.

And therefore a confession, made by persons accused but *not* in police custody, or in police custody but *not* accused, or neither accused nor in police custody, will not be rendered admissible by this section even if any fact is discovered in consequence of it.

Sec. 27 as a proviso to secs. 24. 25 and 26 should be strictly construed and applied: (*Pancham*, I. L. R. 4 All. 198; *Adu Shikdar*, I. L. R. 11 Cal. 635).

"Sec. 27 is not intended to let in a confession generally but only such particular part of it as set the person to whom it was made in motion and led to his ascertaining the fact or facts of which he gives evidence": *Babu Lal*, I. L. R. 6 All. 509 (F. B.), *per* Straight, C. J., cited and adopted by Norris, J., in *Abu Shikdar*, I. L. R. 11 Cal. 635.

Discovery intended by this section is "the physical act of finding upon search or inquiry something or material fact, the existence or the exact locality of which was unknown till then": (A. & W.'s Evi., p. 218, 2nd Edn).

The finding of the thing proves that the information is true and not fabricated. And this correctness of the accused's statement is the *ground* of its admission which is an exception to the general rule.

The statements admitted by this section are the statements *preceding* finding upon such inquiry.

Mere statements which do not lead to any discovery are inadmissible:—(*Rama Birapa*, I. L. R. 3 Bom. 12).

Statements made while pointing out the scene of crime may be admissible as evidence of "conduct" under sec. 8 but not admissible under sec. 27 :— (*Rama Birapa*, I. L. R. 3 Bom. 12).

Stasements accompanying production of articles may be proved as "conduct" under sec. 8 but inadmissible under sec. 27 as there is no discovery :— (*Rama Birapa*, I. L R. 3 Bom. 12).

If the statements are explanatory of the acts they accompany they may be proved as evidence of "conduct" : (*Rama Birapa*, I. L. R. 3 Bom. 12). But see *Nana*, I. L. R. 14 Bom. 260 (F. B.), which lays down that sec. 8 cannot admit a statement as evidence which would be shut out by secs. 25 and 26.

Discovery must be in consequence of *information*: [*Pancham*, I. L. R. 4 All. 198; *Babu Lal*, I. L. R. 6 All. 509 (F. B.); *Kamalia*, I. L. R. 10 Bom. 595; see also *Abu Shikdar*, I. L. R. 11 Cal. 635 ; *Jora Hasji*, 11 Bom. H. C. R. 242].

Where an accused himself produces the article after giving the information, such information cannot be proved as fact discovered by the *act* of the accused and not in consequence of the *information*.

But see *Nana*, I. L. R. 14 Bom. 260 (F. B.) where an accused said he had buried the property in the fields and then himself took the Police to the spot and with his own hands disinterred the earthen pots in which it was kept. It was held that the accused's

statement that he buried the property is *admissible* as it set the Police in motion and led to the discovery of the property, and that a statement is equally admissible whether it is made in such detail as to enable the Police to discover the property or whether it be of such a nature as to require the assistance of the accused in discovering it. In *Chena Nashya*, I. L. R. 25 Cal, 413 : s. c. 2 C. W. N. 257, the Calcutta High Court has laid down the same principle. In this their Lordships followed *Nana*, I. L. R. 14 Bom. 260 (F. B.), and dissented from *Pancham*, I. L. R. 4 All, 198. *Pagaree Shaha*, 19 W. R. Cr. 51, is another Calcutta case in support of *Nana*, I. L. R. 14 Bom. 260 (F. B).

Where a fact is discovered in consequence of information received from one of several accused persons, and when others give like information the fact should not be treated as discovered from the information of them all :—[*Ram Charan Chung*, 24, W. R. Cr. 36 ; *Babu Lal*, I. L. R. 6 All. 509 (F. B.)].

Whatever be the nature of the fact discovered, the fact must in all cases, be relevant to the case, and the connection between it and the statement made, must have been such that that statement constituted the information through which the discovery was made in order to render the statement admissible :—(*Jora Hasji*, 11 Bom. H. C. R. 242).

Production by an accused person, while in the hands of the police, of a thing unconnected with the commission of the crime is not admissible in evidence against him.—(*Chandan*, 3 P. W. R. 1907 Cr.).

In order to let in the information which leads to a discovery, the fact discovered must be one which of its own force, independently of the confession would be inadmissible in evidence :—(*Rama Birapa*, I. L. R 3 Bom. 12, at p. 16 ; *Choda Atchenah*, 3 Mad. H. C. R. 318).

So much of the information as leads *directly* and *immediately* to, and is the *proximate* cause of, the

discovery can be proved : [*Babu Lal*, I. L. R. 6 All. 509 (F. B.); *Nana*, I. L. R. 14 Bom. 260 (F. B.); *Commer Sahib*, I. L. R. 12 Mad. 153 ; *Adu Shikdar*, I. L. R. 11 Cal. 635].

Pagaree Shaha, 19 W. R. Cr. 51, gives a wider construction of the words "as relates distinctly." It admits not only so much of the information which leads directly and immediately to the discovery of the fact but also the portion which leads *mediately* by way of explanation. But this has been overruled by a later case, *Adu Shikdar*, I. L. R. 11 Cal. 635, which laid down the same principle as laid down by many cases reported under Allahabad, Madras and Bombay High Courts.

SEC. 533 CR. P. C.

Sec. 533, Cr. P. C., has a very important bearing on confessions, inasmuch as it gives power to remedy defects in procedure in recording them. The alterations, made by the Code of 1898 to meet several reported cases, have given the section much wider scope than it had under the Code of 1882.

Though the record of a confession, purporting to have been made under sec. 164, Cr. P. C., is not admissible in evidence, unless it has been signed by the person who has made it, yet the confession can be proved by parol evidence and if proved, may be used as evidence in the case : (*Empress* v. *Raghu Mabadu*, Bom. H. C., March 14, 1898). Cited in Prinsep's Pro. Code.

Where a confession had been made in the vernacular, but had been recorded by the Native Magistrate in English, it was received in evidence on the examination of the Magistrate who proved that it had been made. It was observed that the object of sec. 533, Cr. P. C., was to prevent justice being frustrated by the Magistrate having failed to comply with sec. 164 or 364, Cr. P. C. : (*Anta*,

All. W. N., 1892, p. 60 and *Razai Mia*, I. L. R. 22 Cal. 817: *Visram Babaji* I. L. R. 21 Bom. 495; *Raghu*, I. L. R. 23 Bom. 221).

Under sec. 533, Cr. P. C., when a confession or other statement of an accused person is duly made in accordance with the provisions of the law, but in the recording of it, those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended to cure is not one of substance but of form only:—(*Bhairub Chuckerbutty*, 2 C. W. N. 702; *Viran*, I. L. R. 9 Mad. 224; *Jai Narayan Rai* I. L. R. 17 Cal. 862, p. 870; *Anga Valayan*, I L. R. 22 Mad. 15).

Sec. 533, Cr. P. C., is intended to apply to all cases in which the directions of the law have not been fully complied with. It applies to omission to comply with the law as well as the infraction of law:—(*Raghu*, I. L. R. 23 Bom. 221 followed *Visram Babaji*, I. L. R. 21 Bom. 495; dissented from *Jai Narayan Rai*, I. L, R. 17 Cal. 862).

In re Bepin Manjhi and ors., reported in 3 C. W. N. (notes) ciii, where objection was taken that certain alleged confessions by the accused had been improperly admitted inasmuch as the Magistrate who took them down under sec. 164, Cr. P. C., did not certify them as confessions but had stated at the foot of the record that the accused did not make confessions and that these and three other alleged confessions had not been signed by the Magistrate as required by sec. 364, Cr. P. C., *viz.*, at the foot of the record, although he had signed the certificate: Their Lordships directed the Sessions Judge to take the evidence of the recording Magistrate under the provisions of sec. 533 (1) Cr. P. C., as to whether the accused persons duly made the statements recorded and to send the evidence to be taken duly certified by the Court.

Where in recording the examination of the accused which was taken on two several occasions, the Magistrate made the certificate required by S. 364, Cr. P. C. on the first page of the record only, although the record of the examination taken on the first day alone extended over two pages. and that taken on the second day was written entirely on the second page : It was held that the defect was cured by the evidence of the Deputy Magistrate having been recorded.—(*Rajani Kanta Koer* 8 C. W. N. 22).

DYING DECLARATIONS.

Sec. 32, Evidence Act, provides for eight cases which are exceptions to the general rule *viz.*, that oral evidence must in, all cases whatever, be direct ; (See sec. 60, Evidence Act).

Cl. (1) of sec. 32 is one of such exceptions. It enacts that statements made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death are *relevant*, whatever may be the nature of the proceeding in which the cause of the death of the person, who made the statement, comes into question.

So, a dying declaration is admissible in criminal as well as in a civil proceeding, provided it is necessary in that proceeding to decide how a particular death was brought about. See Illus (*a*) to sec. 32 which gives an example of a criminal as well as of a civil case. In this respect the Indian law differs from the English law inasmuch as the latter does not admit dying declaration in civil cases, but only in criminal cases and that again only in the single instance of homicide where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declaration : (See Taylor, § 714).

Indian law differs from the English law in another respect in regard to the dying declaration. Under the English law, in order to render the dying declaration admissible, it is necessary that the declarant should have been in *actual danger of death*, that he should have had *a full apprehension of his danger*, and that *death should have ensued*: (See Taylor, § 718). Under the Code such statements *in extremis* are relevant whether the declarant *was* or *was not*, at the time the statements were made, *under expectation of death*.

According to the English text writers, the principle upon which the dying declarations are admitted is (i) the *public necessity*; for the victim being generally the only eye-witness to such crimes the exclusion of his statement would tend to defeat the ends of justice; and (ii) *the sense of impending death* which creates a sanction equal to the obligation of an oath: (*Vide* Taylor's Evi., §§ 716, 717; 3 Russ., p. 388; Phip., p. 298).

The declarations are only admissible to prove *the cause and circumstances of death* and not *previous or subsequent transactions*, although relevant to the issue: (*R.* v. *Mead*, 2 B. & C. 605; *R.* v. *Hind*, 29 L J. M. C. 147: cited in Phip. Evi.).

They must not in general include matter inadmissible from the mouth of a witness, *e. g.*, hearsay or irrelevancy: [1 Greenleaf, sec. 159, note (*a*)].

Opinions are usually inadmissible: (*R.* v. *Sellers*, Carr. C. L. 233); but in *R.* v. *Scaife*, I Mo. & Rob. 551, an opinion favourable to the prisoner was admitted; and in *Haney* v. *Comm.* 5 Cr. Law Mag. 47, it was held, on the authority of this case, that opinions when justifying the prisoner are in general receivable. So, of course, opinions as to identity or other matters admissible from the mouth of a witness: (See Phip. Evi.)

Sec. 162 (2) of the Code of Criminal Procedure excludes from its operation the dying statements made to a police-officer during Police investigation. Therefore, a dying declaration made to an investigating police-officer may be taken down in writing; it may be signed by the person making it, and it may be used as evidence. The police-officer or some other person must however be examined to prove the statement made, and he must state what the deceased said to him. The statement purporting to be a dying declaration may be used to refresh memory, but it is not evidence in itself like a deposition made to a judicial officer by a witness who has since died and cannot therefore be again examined: (Prinsep's Cr. P. C., p. 139).

The following instructions are given in Bengal Police Code, Vol. I, p. 377, for the guidance of the police-officers:—

"When a person, whose evidence is required, is in imminent danger of death, his statement should be recorded by a Magistrate, exercising judicial jurisdiction. If this cannot be arranged for and it becomes necessary for some other person to record this dying declaration, it should, if possible, be made in the presence of the accused or of attesting witnesses. A dying declaration made to a police-officer should, under the provision of sec. 162, Criminal Procedure Code, be signed by the person making it."

When a police-officer, making inquiry in any case has reason to believe that a person whose statement may have an important bearing on the case is in a dangerous state and likely to die before the completion of the proceedings, or before his deposition can be taken on oath in presence of the accused before a Magistrate, he should be most careful first to ascertain, in the presence of the respectable witnesses, the apparently dying man's impression of his own condition, and next to take down his statement *verbatim*—see instructions to police-officers—

Bengal Police Manual, p. 379: (Cited in Henderson's Cr. P. C., p. 159).

Where a Judge is sitting with a jury, the admissibility of the dying declaration in any particular case is a question to be decided by the Judge alone: See sec. 298, Cr. P. C.

When a dying man is taken before a Magistrate to have his statement recorded, the Magistrate should take down the statement in presence of the accused, if circumstances permit, and in accordence with the provisions of Chap. XXV of the Code of Criminal Procedure as a formal deposition. If this is done and the declarant dies or becomes incapable of giving evidence at the Sessions, the deposition so taken will be admissible in evidence, subject to sec. 33, Evidence Act, without further proof. But if the statement is not taken down in the presence of the accused and as a formal deposition, it will still be relevant under sec. 32, but, before it can be admitted in evidence, it must be proved to have been made by the deceased:—(*Reg.* v. *Fata Adaji*, 11 Bom. H. C. Rep. 247).

The Magistrate who recorded the statement, or any one else who heard the statement made, can prove it. The Magistrate may refresh his memory with the writing made by himself at the time when the statement was made:—(See *Samirruddin*, I. L. R. 8 Cal. 211, *infra*).

A dying declaration recorded in the absence of the accused by a Magistrate other than the Magistrate who held the inquiry preliminary to commitment to the Court of Sessions, is not admissible in evidence unless and until it had been proved by the Magistrate who recorded it. A note on the order sheet that the document was admitted without any objection on the part of the accused does not make any difference.—(*Jatindra Nath Chatterjee* 11 C. W. N. 666). *Panchu Das* 34 Cal. 698 another case.

When any person whose evidence is essential to the conviction of a prisoner, charged with the commission of a crime, may be in imminent danger of dying before the case comes to trial, the deposition of the dying person should, if possible, be recorded in the presence of the accused or of attesting witnesses, and in the event of his death submitted at the trial with evidence of this fact:—(C. O. No. 47, 31st July, 1857; Cal. G. R. and C. O., p. 26).

The dying declaration of a deceased should form part of the Sessions record:—(*Soyumber Singh*, W. R. Cr. 2).

In determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under sec. 371, Cr. P. C., a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their personal knowledge to such declaration should not be admitted; and in deciding whether the accused is guilty o the charge of murdering the deceased declarant, the Court should confine itself to inquiring into the facts which occurred on the day of murder. The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind:—(*Zuhir*, 10 W. R. Cr. 11).

Before a dying declaration can be received in evidence, it must be distinctly found that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die. Where a Sessions Judge sees from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration, he should call for the evidence. A Magistrate should, in all cases in which dying declarations are made, examine the complainant on the point and record the question as well as the answer to it

upon the record of the examination:—(*Sheikh Tinoo* 15 W. R. Cr. 11).

A dying declaration is admissible in evidence in all criminal cases, provided all the conditions attaching to its admission have been fulfilled, and is not confined to cases in which the death of the injured party is the sole object of inquiry. There must be some evidence of the state of the deceased person at the time of making the declaration. The Magistrate recording a dying declaration should put on record the answer of the declarant to a question touching his knowledge or belief in his approaching death:—(*Ujrail* 3 N. W. P. 212, refers to *Khyroollah* 6 W. R. Cr. 21; *Bissorunjan Mukerji*, 6 W. R. Cr. 75; *Sheikh Tinoo* 15, W. R. Cr. 11; and *Kalika Misser*, 1 Agra H. C. R. 3).

The declaration of a dying person, albeit made on solemn affirmation before a Magistrate, who was not, however, the committing Magistrate, and signed by him, is not admissible without legal proof that the deceased made such a declaration:—(*Fata Adaji*, 11 Bom. H. C. R. 247).

In a case of murder, the statement made by the deceased in the presence of his neighbours and of a head-constable was admitted as relevant under sec. 32 cl. (1), Evidence Act I, 1872, that section providing that such statement is relevant whether the person who made the statement was or was not at the time when it was made under expectation of death:—(*Degumber Thakur*, 19 W. R. Cr. 44: s. c. 6 C. L. R. 278).

The statement is not admissible under the English law unless the death of the person who made it has ensued. Under the Indian Evidence Act the same rule will prevail, inasmuch as the statement is admissible only in cases in which the cause of the *death* of the person who made it comes in question:—(*Nobin Krishna Mukerjee* v. *Rasik Lal Laha*, I. L. R. 10 Cal. 1047).

The words "or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot," &c., in the first part of sec. 32 have no application in connection with dying declaration: (Field, p. 172 note).

A dying declaration taken down by a head-constable in writing under sec. 162, Cr. P. C. is admissible when the document itself is put in and formally proved by him. It is not proper to allow him to give evidence as to its purport orally:—(*Thakuria*, 7 C. P. 14).

In a trial upon a charge of murder, it appeared that the deceased shortly before her death was questioned by various persons as to the circumstances in which the injuries had been inflicted on her, and that she was at that time unable to speak but was conscious and able to make signs. Evidence was offered by the prosecution and admitted by the Sessions Judge, to prove the questions put to the deceased, and the signs made by her in answer to such questions. *Held* by the Full Bench (Mahmood J., dissenting), that the questions and the signs taken together might properly be regarded as "verbal statements" made by a person as to the cause of her death within the meaning of sec. 32, Evidence Act, and were, therefore, admissible in evidence under that section. *Per* Mahmood, J., that the expression "verbal statements" in sec. 32, Evidence Act, should be confined to statements made by means of a word or words, and that the signs made by the deceased not being verbal statements in this sense, were not admissible in evidence under that section:—[*Abdulla*, I. L. R. 7 All. 385. (F. B.)].

A dying declaration made by signs in response to questions is admissible in evidence, but in that case the record should show the question put and the nature of the signs made in reply:—(*Buta*, P. R. 2 of 1886).

The dying declaration of a deceased person is admissible in evidence on a charge of a rape :—(*Bissorunjan Mukerjee*, 6 W. R. Cr. 75).

The deposition of the person murdered taken before the Magistrate and the medical evidence should be annexed to the Sessions record:—(*Chintamonee Nye*, 11 W. R. Cr. 2 ; *Soyumber Singh*, 9 W. R. Cr. 2).

The dying statement of a deceased person must be taken in the presence of the accused ; if not so taken, the writing cannot be admitted to prove the statement made. The statement may be proved in the ordinary way by a person who heard it, and the writing may be used for the purpose of refreshing witness's memory :—(*Samiruddin*, I. L. R. 8. Cal. 211 s. c. 10 C. L. R. 11). Followed in *Doulat Kunjra*, 6 C. W. N. 921.

If the statement of the deceased was committed to writing, and *signed* by him at the time it was made, it has been held essential that the writing should be produced if existing, and that neither a copy nor parol evidence of the declaration could be admitted to supply the omission :—(*Gay*, 7 C. & P. 230. Greenl. Evi. 199; *Trowter's* case, 12 Vin. Abr. 118, 119; *Leach* v. *Simpson*, in Scac. Pasch., 1839, 1 Law and Eq. Rep. 58, cited in 3 Russ., p. 394).

A declaration made by a person in expectation of death recorded in the absence of the accused and in a language different from the one in which it is made by an officer who is not examined in the case cannot properly be used in evidence against the accused and, at any rate, such a declaration should not be relied upon in convicting the accused :—(*Per* Ghosh. J., *In re Mathura Thakur*, 6 C. W. N. 72).

Per Taylor, J.—Witnesses should not be allowed to prove a dying declaration as if it is a substantial piece of evidence in the case. The relevant fact to be proved is the statement made by a deceased person admissible under sec. 32 of the Evidence Act,

and that statement is not the document made by the Magistrate but the verbal statement made by the deceased person.

The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him or read over by him at or about the time the statement is made.

When such a declaration is not a continuous statement made by the dying person but is elicited in answer to one or more questions, the document to be really of use should clearly set out the exact questions put and the answers made to them : (*Ibid*).

Appellant was convicted and sentenced to transportation for life on a charge of dacoity. The most material evidence for the prosecution was the statement, in the nature of a dying declaration, made to a jemadar of Police by one Fakiria Shimpi who received wounds during the dacoity and who died before the trial commenced.

The Assistant Surgeon, who made the *post-mortem* examination on the deceased, was not called, being on leave, but the Civil Surgeon, on a perusal of the notes left by the Assistant Surgeon, gave evidence that the cause of death of the deceased was pneumonia aggravated by a stab. In the notes themselves no cause of death was given, and there was no evidence as to how the pneumonia was aggravated. No explanation was given as to how the opinion was formed that the pneumonia was aggravated by the injury, and there was nothing in the notes to support it ; *Held*, that the statement of the deceased ought not to have been admitted in evidence in the absence of evidence to show that his death was caused or accelerated by the wounds received at the dacoity or that the dacoity was the transaction which resulted in his death ; (*Rudra*, I. L. R. 25 Bom. 45).

The declarant must have been competent as a

witness. Thus imbecility or tender age will exclude the declaration : (*Drummond*, 1 Leach C. C. 338; *R.* v. *Pike*, 3 C. and P. 598). And his credibility may perhaps, be impeached in the same manner as that of a witness. There is no express English authority, but in America the rule is well established.—Phip. Evi.

See sec. 118, Evidence Act. If the declarant be a person who, under the provisions of this section, would be considered incompetent to testify, his declaration will not be admissible under sec. 32, cl. (1). *Vide* Field's Evi., p. 172.

If the declarant be an accomplice his dying statement is admissible : [*R.* v. *Tinckler*, (1781). East P. C. 354].

Dying declarations must in general narrate facts only and not mere opinions : [*R.* v. *Sellers*, (1796), Car. C. L. 233].

But it is not necessary that the examination of the deceased should have been conducted after the manner of interrogating a witness in the cause, though any departure from this mode may affect the credibility of the declaration. (Taylor. § 720).

The declaration should be *complete*, conveying the whole of what the declarant intended to say; an unfinished statement or one which the declarant intended but was prevented from qualifying is inadmissible : [3 Leigh R. 797 ; 1 Greenleaf, sec. 159, note (a) ; *State* v. *Johnson*, 40 Am. St. R. 405 : where a declaration not stating the assailant's name was rejected].

The *actual words* of the deceased must be proved and not merely their *substance* ; if questions were put, both these and answers must be given to enable the Court to see how much was suggested by the examiner and how much spontaneously produced by the declarant : (*Mitchell*, 17 Cox. C. C. 303, *per* Cave, J.).

The declarations may be oral or written. And they are not rendered incompetent (though their weight may be impaired) through being made in response to leading questions : (*Smith*, 10 Cox. 82 ; *Mitchell*, 17 Cox. 303) ; or being in answer to questions and not a connected and continuous statement flowing from declarant, or obtained by earnest solicitation : (*Fagent*, 7 C. and P. 238 ; Reason, 1 Str. 499) ; or through having been taken as depositions and proving inadmissible as such : (*Clarke*, 2 F. and F. 2 ; *Dingler*, 2 Leach 561 ; *Callaghan*, M'Nally Evi. 385, Rosc. Cr. Evi. 33 ; *Woodcock*, 1 East P. C. 356).

Where a statement ready written was brought by the father of the deceased to a Magistrate, who accordingly went to the deceased and interrogated her as to its accuracy, paragraph by paragraph, it was rejected : [*R.* v. *Eitzerald*, 1841 (Ir.)].

A dying declaration is equal, in point of sanction, to an examination on oath, but the opportunity of investigating the truth is very different. (*Rex* v. *Ashton*, 2 Lewin C. C. 147).

If a child be too young to be capable of having an idea of a future state, his declarations are inadmissible : (*Pike*, 3 C. and P. 598).

But if a child be of intelligent mind and fully comprehends the nature of an oath and the consequences, in a future state, of telling a falsehood, his statements is admissible ; (*Perkins*, 2 Moo, C. C. R. 135 : s. c. 9 C. and P. 395,). In this case the child was more than 10 years old.

Dying declarations are evidence either for or against the prisoner ;—(*Scaife*, 1 Mo. and Rob. 551).

With respect to the effect of dying declarations, the following passage from Taylor's Evi., Vol. I, p. 470, is worth noticing.

"Though declarations, deliberately made under s solemn sense of impending death, and concerning circumstances, wherein the deceased is not likely to be mistaken are entitled to great weight, it should always be recollected that the accused has not the *power of cross-examintaion*—a power often as effectual in eliciting of the truth as the obligation of an oath;—and that where a witness has not a deep sense of accountability to his Maker, feelings of anger or revenge, or in the case of mental conflict, the natural desire of screening his own misconduct, may affect the accuracy of his statements, and give a false colouring to the whole transaction. Moreover, the particulars of the violence to which the deceased has spoken are likely to have occurred under circumstances of confusion and surprise calculated to prevent their being accurately observed and leading both to mistakes as to the identity of persons and to the omission of facts essentially important to the completeness and truth of the narrative."

See also 3 Russ., p. 396; and also Field's Evi.,

APPENDIX.

INDIAN EVIDENCE ACT.

(Act I of 1872.)

(As modified up to the 1st May,

Sec 24: A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority, and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in referrence to the proceedings against him.

Confession caused by inducement, threat or promise when irrelevant in criminal proceeding.

Sec. 25: No confession made to a police-officer, shall be proved as against a person accused of any offence.

Confession made to a police-officer not to be proved.

Sec. 26: No confeseion made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Confession by accused while in custody of Police not to be proved against him.

Explanation.—In this section 'Magistrate' does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such head-man is

a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1

How much of information received from accused may be proved.

Sec. 27: Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat, or promise, relevant.

Sec. 28: If such a confession as is referred to in sec. 24 is made after the impression caused by any such inducement, threat, or promise, has in the opinion of the court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

Sec. 29: If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

Sec. 30: When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—"Offence," as used in this section

includes the abetment of, or attempt to commit the offence.*

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said—'B and I murdered C. The Court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said —'A and I murdered C.'

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

Sec. 32: Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become in capable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

When it relates to cause of death.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was, or was not, at the time when they were made under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

* This explanation was inserted in this section by Act 1891, sec. 4.

Illustration.

(*a*) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or
the question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

* * * * * *

Presumption as to documents produced as record of evidence.

Sec. 80: Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Court may presume existence of certain facts.

Sec. 114: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

* * * *

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

* * * *

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

* * * *

as to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself.

as to illustration (*b*)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

* * * *

Sec. 133 : An accomplice shall be a competent witness against an accused person ; and a conviction is merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice.

CODE OF CRIMINAL PROCEDURE.

(Act V of 1898).

Sec. 162 : (1) No statement made by any person to a police-officer in the course of an investigation under this chapter (XIV) shall, if taken down in writting, be signed by the person making it, nor shall such writing be used as evidence :

Statements to Police not to be signed or admitted in evidence.

Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the Court shall, on the request of the accused, refer to such writing, and may, then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof : and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of sec. 32, cl. (1) of the Indian Evidence Act, 1872.

Sec. 164 : (1) Every Magistrate not being a police-officer may record any statement or confession made to him in the course of an investigation under this chapter (XIV) or at any time afterwards before the commencement of the inquiry or trial.

Power to record statement and confession.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confession shall be recorded and signed in the manner provided in sec. 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to beleive that it was made voluntarily; and when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Sd.) A. B.,
Magistrate."

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

When accused person to be discharged.

Sec. 209: (1) When the evidence referred to in Sec. 208, sub-secs. (1) and (3), has been taken, and he has (if necessary) examined the accused *for the purpose of enabling him to explain any circumstances, appearing in the evidence against him*, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he will poceed accordingly.

Examination of accused before Magis-

Sec. 287: The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Sec. 288 : The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Evidence given at preliminary inquiry admissible.

Sec. 298: (1) In such cases [tried by jury] it is the duty of the Judge—

Duty of Judge.

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties ; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties ;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial ;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given ;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Sec. 337 : (1) In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring

Tender of pardon to accomplice.

into the offence, or with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) Every person accepting a tender under this section shall be examined as witness in the case.

(3) Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

(4) Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reason for so doing; and, when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

Power to direct tender of pardon.

Sec. 338: At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Sec. 342: (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as

the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witness for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

Examination of accused how recorded.

Sec. 364: (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Punjab, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court, or in English: and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that

the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under sec. 263.

Non-compliance with provisions of sec. 164 or 364.

Sec. 533: (1) If any Court before which a confession or other statement of an accused person recorded or purporting to be recorded under sec. 164 or sec. 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872, sec. 91, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts Appeal, Reference and Revision.

INDEX.

	PAGE.
Abetment—	
joint trial for an	66
conviction for, on confession of co-accused	66
mere consent to be present or actual presence, at illegal marriage, necessarily not an, of such marriage	77
Abettor—	
person who could be put on his trial under s. 107, I. P. C.	76
person standing by while crime being committed	79
persons taking active part in a murder. *See Principals*	79
person subscribing to, collecting or paying bribe, to accused	80
as accomplice-witness, evidence of ...	80
offerers of bribe are	80
Accomplice—	
competent witness under s. 133 Evi. Act ...	67
may be examined on oath	67
conviction not illegal merely because it proceeds upon uncorrobo. testimony of an	67
unworthy of credit	67
unsafe to convict on evi. of, without corrobn.	67, 73
not like ordinary witness in re credibility ...	69
evidence of, tainted	69
——————corroboration necessary ...	69
misdirection, if Judge does not point out to jury danger of trusting evidence of ...	69
evidence of, not sufficient for conviction ...	70

Accomplice—*contd.* PAGE.

must be corroborated as to *identity* of every person he impeaches 70
——cannot be corroborated by his own previous statement 70
——nor by his fellow-prisoner's testimony ... 70
as a witness after pardon 71
conviction on uncorroborated testimony of, not illegal but unsafe (*See Contra*) ... 71
omission to follow established rule of practice as to corrobn. of evidence of, does not constitute an error in law ... 71
presump. that an, unworthy of credit unless corroborated, is a rule of universal prac-

although convic. not illegal evi. of, must be corroborated, and accepted with caution 71
——————corroborated not only as to one but all persons affected ... 72
corrobn. as to one prisoner does not entitle evi. of, to be accepted agst. another without corrobn. 72
instances of sufficient corrobn. of statement of 72
evidence of, to be accepted with caution and scrutiny 73
persons no better than, (*See Witness*) 73, 76, 79, 80
uncorroborated evidence of a convict ... 74
a witness erroneously treated as an, and granted pardon 74
generally unsafe to convict on evidence of, unless corroborated 75
——————no general rule as to application of this maxim in regard to persons coming technically within category of 75
giver of bribe is, of person receiving it ... 75
testimony of persons compelled to pay illegal gratification has greater probative force than ordinary 75
distinction between a spy and an, ...

Accomplice—*concld.* PAGE.

witnesses to payment of bribes whether, ... 78
person cognizant of murder 15 days without disclosing it, not an, ... 76
person implicated in guilt and liable to be punished 76
particeps criminis or abettor 76
different classes of 76
must be in conspiracy or cognizant of plot 76
person accompanying another entrusted with money to be given as bribe 78
person offering bribe to a public officer ... 78
informer cognizant of an offience but omitting to disclose six days though not an, his evidence required corrobn. 78
unless somewhat co-operates in payment of bribe, mere presence on occasion of giving, or omission to promptly inform authorities does not constitute an 79
money-lender advancing extortion-money not an 79
primary and secondary 79
—— ——, respective corrob. of their evidence 79
participator in crime 79
by implication 80
person not interfering with or preventing crime committed in his presence ... 80
subscriber to and collector of bribe ... 80
person witnessing payment of bribe or entering payment after transaction over not 80
misdirection if a Judge so directs ... 80
deposition of approver after conditional pardon withdrawn against his ... 82

Accused—

asking incriminating questions ... 28
to sign confession recorded under ss. 164 and 364, Cr. P. C. 28

Accused—*contd.*
parol evidence taken if confession not signed by 28
refusal to sign confession by 28
statement always to be recorded in language of 29
examn. of, by way of cross-examn. during Police investigation 32
making two incriminating statements one before Mgte. another before a Police offic. 35
———, to fill up gaps in prosn. evi. ... 45
———, in re. his previous conviction ... 45
———, as additional evidence ... 46
———, as prelim. proceeding ... 46
———, to be taken down in language delivered and as far as possible in words used by him 48
———, before Magistrate to be given at Sessions trial ... 48
examn. of, prosecution no discretion to put it or not ... 48
———, should be recorded in manner prescribed by s. 364, Cr. P. C. 47
———, whole, should be read at Sessions trial ... 48
———, under s. 342, Cr. P. C., *primâ facie* admission under s. 21, Evi. Act ... 46
police-officer acts illegally in offering inducement to 42
ss. 209 and 342 provide for examn. of ... 43
meaning of, in s. 342, Cr. P. C. ... 45
to be examined after some evidence against him recorded 45
when pros. evi. does not disclose any charge against, Magte. should not examn. 46
statement of, not to be recorded by police-officer prelim. to arrest, when there is sufficient evidence to justisfy his arrest ... 51

Accused—*concld.* PAGE.

————, inadmissible under s. 25 as well as s. 30, Evi. Act ... 66
————, to a friend in temporary absence of police-escort ... 51
————, held admissible or inadmissible 55
admission by, before arrest to a police-officer 56
evi. of, acquitted but re-arrested pending Govt. appeal against his co-accused ... 74
tried jointly and discharged under s. 494, Cr. P. C., as competent witnesses ... 68
testimony of approver must be corroborated as to identity of 81
in respect of identity of each, corroborative evidence necessary 81
evi. of witness admitting commission of crime with, and not open to same charges needs no corrobn. for admission ... 82
forfeiting pardon, his incriminating statement 86
it is unfair to defer convicting, at a joint trial, in order to record their confessions against others 83
evidence of, admitted or likely to be admitted approver in police-custody up till time of trial 84
retracted confession as evidence against ... 88
confession extracted keeping in police-custody for sometime, retracted and at variance 90

Act—

XIX of 1853 1
II of 1855 1
its scope 1
XVII of 1862 2
I of 1872 2

Admission—

definition of, in English law 3

Admission—*contd.* PAGE.

application of term, in English law ... 3
defined by s. 17, Evi. Act 3
distinction between confession and ... 3
must be taken as a whole 4
of guilt under s. 255, Cr. P. C., and examn. of accused recorded under s. 364 Cr. P. C., distinction between ... 25
when examn. of accused under s. 342 as *primâ facie*, relevant under s. 21, Evi. Act 46
obtained by promises of immunity by police 55
admissibility of, made to a police-officer before arrest by an accused person ... 56
of crime to Magte. before formal accusation 57
confession to a police-officer may be admissible as, in inquiry under s. 523 Cr. P. C., under s. 18, Evi. Act ... 53

Affidavit—

admissible against maker in both criminal and civil cases 6

Approver—

where evidence of, held to have been sufficiently corroborated 73, 83
evidence of, not sufficient for conviction without corrobn. 81
————nature of corrobn. necessary ... 81
testimony of, as to identity of each accused 81
exact correspondence in details of several statements made by, no corrobn. ... 81
deposition of, against his accomplices at Sessions if conditional pardon withdrawn 82
testimony of, summing up by Judge ... 82
trial of, pardon withdrawn 82
accused's right to cross-examine, before latter's evidence used against him ... 82
proper way of placing before jury evi. of, ... 83
evidence of person likely to be admitted as, and detained in police-custody up till time of trial open to greatest suspicion ... 84

Approver—*concld.* PAGE.

statement of, under s. 288, Cr. P. C. ... 92
co-prisoner's confn. much weaker than that
who can withdraw pardon granted to ... 82
utmost caution necessary admitting evidence of 84
See Sec. 337 Cr. P. C.
to commit, for trial on evidence taken before 86
when statement of, before Magte. inadmissible agst. accd. under s. 288 Cr. P. C. ... 92

Bribe—

giver of, an accomplice of person receiving it 75
————, evidence of person bribed ... 75
persons accompanying another entrusted with money to be given as 78
persons offering, to a public officer ... 78
mere presence on occasion of giving, and omission to promptly inform authorities ... 79
money paid for obtaining release of a person wrongfully confined is not a 79
persons subscribing to 80
persons witnessing payment of, or entering it after transaction over 80
————, when misdirection ... 81

Co-accused or co-prisoner—

statement of, technically not evidence ... 61
————, conviction founded on such evidence 61, 64
confession of much weaker than that of accomplice or approver 61
statement of, to be corroborated by independent witnesses 61
————, not by testimony of accomplice or approver 62
confession alone, will not sustain conviction 62
confession of, if proved, evi. of weakest kind 64

Co-accused or co-prisoner—*contd.* PAGE.

——————, if uncorroborated not sufficient to warrant conviction 64
infirmities of confession of 65
statements by prisoner in absence of conviction thereon 65
conviction for abetment on confession of ... 66
statements of accd. persons prelim. to arrest, taken by police officer inadmis. under s. 25 as well as 30, Evi. Act against ... 66
evidence of accused acquitted but arrested in Govt. appeal against his ... 74
confession of, not sufficient without corrobn. 81
right of, to cross-examine an approver before his evidence used against ... 82

Complaint—

by a person in custody as an accused cannot be used against him as evidence ... 7

Conditional pardon—

See Pardon.

Conduct—

See s. 8, *Evidence Act.*

Confession—

a declaration against interest 3
not defined by Evi. Act 3
as defined by Sir James Stephen ... 3
——————, its general acceptance by Indian Courts 3
incriminating statement or from which inference of guilt follows 3
statement admitting offence but explaining away acts standing against is not a, but defence 4
Statement not implicating deponent not a ... 4
Statement inculpating co-accused, but exculpating themselves, not 4
must be free and voluntary 4

Confession—*contd.* PAGE.

whole, not part of 4
of prisoner made in absence of another ... 4
proof of, being voluntarily made lies upon prosecution 5
rejected when doubt existed its being made in consequence of inducement ... 5
under hope of being permitted to turn King's evidence 5
king's evidence refusing to give evidence and conviction upon his own ... 5
not to be elicited by questions from a prisoner in custody 5
———— although admissible ... 5
to a police-officer 6, 23
———— even if made in immediate presence of a Magistrate ... 6, 23
to private person while in police-custody and *not* in immediate presence of Magte.... 6, 24
to private person whilst *not* in police-custody 6
————, whilst in police-custody in immediate presence of a Magistrate ... 6
under promise, threat or inducement from person in authority 7
after removal of impression caused by promise, &c. 7
under a deception or artifice 7
of accused evidence against himself only ... 7
convic. of a prisoner on his own uncorrobo. 7
properly attested, sufficient for conviction without corrobn. though retracted ... 7
should not only be voluntary, but be only acted on if believed to be true ... 8
when to give weight to 8
not to a police-officer, and not improperly obtained as in s. 24 Evi. Act. admissible 8
of a prisoner in one case against him in another case 8
to a private individual evidence against prisoner if proved 8

Confession—*contd.* PAGE.

to residents of neighbouring villages ... 8
facts discovered in consequence of, admissible 8
reason of admissibl. of a free and voluntary 9,11,18
duly made and proved sufficient for conviction without corroboration *aliunde* ... 9,18
danger in regarding as conclusive ... 9
grounds impairing value of 9
sources of distrust of 9
degree of credit a jury should attach to ... 10
as highest and most satisfactory evidence ... 11
contra 11
carries greater probability of truth in criminal cases than in civil suits ... 12
subject to imperfections of hearsay evidence 12
alone sufficient for conviction even in absence of independent evidence ... 12
————, *contra* most in accordance with general principle of reason and justice ... 12
passages from Will's Cir. Evi. in support ... 13
need of extreme caution in accepting ... 14
cases of, found false ... 15, 16, 17, 18
instances of torture by Police in extorting ... 18, 21
Suspicious and grossly improbable ... 21
extra judicial 21
tests for appreciating evidence of a witness not to be applied to a 22
substantive and adjective law of ... 22

See Appendix.

Evidence Act.
Criminal Pro. Code.

presumption upon which a, received ... 22
not made voluntarily to be excluded ... 23
irrelevant 23
relevant 23
safeguard to prevent practice of oppression in order to extort 23
statement of accused, prelim. to arrest, taken by police-officer is a 23

Confession—*contd.* PAGE.

made whilst in police-custody inadmis. unless made in immediate presence of Magte. 24
to a private person in immediate presence of a Magte. admissible against maker ... 24
made by person tried jointly with another may be proved in another's favour, although inadmissible against maker under s. 25 or s. 26, Evi. Act 24
terms of ss. 164 and 364, Cr. P. C., to be strictly observed in recording ... 25
defect in recording, cured by examining recording Magistrate 25
to be recorded as prescribed by s. 364, Cr. P. C. 25
before a Magistrate in a Native State ... 27
obtained by asking incriminating questions 28
a Magistrate to ascertain whether voluntarily made 28
to be signed by accused and Magte. and a certificate by Magte. to be attached to ... 28
if not signed by accused parol evi. taken ... 28
duly recorded and certified by Magte. evi. agst. maker unless shut out by s. 24, Evi. Act 33
s. 80, Evi. Act, in con. with recording of ... 34
presumed to be voluntary 38
in absence evi. not to be presumed otherwise 38
obtained after illegal detention by Police ... 38
induced by moral or religious exhortations... 39
made under promise of pardon under s. 339, Cr. P. C. 39
spiritual advice to make 39
statement admitting crime but pleading compulsion not a 41
made after being cautioned by Magte. ... 41
induced by promising immunity from prosecution in another case 41

Confession—*contd.* PAGE.

under threat for a purpose other than to extort 41
admitted through examination of accd. inadmissible 47
elicited by questions not inadmissible, if no undue influence used 48
to a Dy. Commr. of Police in Calcutta. *See Police-officer* 49
——, Police Patel. *See Police-officer* ... 49
—— 'tenhouse gaung' ... 49
——, Chowkidar. *See Police-officer* ... 49,50
——, Village Magistrate ... 51
of guilt to a police-officer while in police-custody 51
——not admissible as evidence of conduct under s. 8, Expln. (1), Evi. Act ... 51
to a police-officer while in police-custody under ss. 25 and 26 inadmissible ... 52
circumstances rendering, objected to under ss. 24, 26, Evi. Act, admissible ... 53
to a police-officer may be used for other purposes under s. 18, Evi. Act 53
—— inadmissible under s. 25, except so far as provided by s. 27, Evi. Act. 53
to a punchayet 55
not taken as prescribed by Cr. P. C. High Court sent back to take evi. proving it... 57
made before Magte. but retracted before Sessions Court, evidence against maker... 58
—— but unsafe to convict without corrobn. 58
not inadmissible because made to Magte. who held inquiry and committed to Sessions... 58
recording of, not affected by reason of Magistrate's disqualification ... 58
does not become irrelevant for want of Magte.'s memo. 58

Confession—*contd.* PAGE.

in a narrative form admissible in absence of prejudice 58
to a Village Magistrate 58
———, Munsif 59
cannot be expanded to incriminate persons other than maker 60
of one man wholly inadmisible against any other ... 60
of co-prisoners much weaker than that of accomplice or approver... ... 61
———————will not alone sustain conviction 63
of one prisoner, as corroborative evidence against another 63
made by accused at joint trial as evidence... 63
of co-accused, evidence of weakest kind 64
———————, if uncorroborated not sufficient to warrant conviction ... 63
of prisoners tried jointly evidence of defective character 65
infirmities of co-prisoner's 65
conviction in a joint trial on a prisoner's, made in absence of co-prisoners ... 65
in absence of corrobn. conviction for abetment on co-accused's 66
of co-accused if proved is evidence but of the weakest kind 74
a judge to be satisfied that a, voluntarily made before it can be admissible ...
See Retracted Confession.
mere subsequent retraction of a, duly recorded and certified is not enough in all cases to make it appear to have been unlawfully induced 89
made before Magte. but retracted when read out does not amount to a, though plea of ill-treatment proved untrue ... 90

Confession—*concld.* PAGE.

if, true in Court's opinion he is bound to act as far as maker concerned ... 90
extracted keeping accused in police-custody, retracted at prelim. inquiry and before Sessions and at variance with evidence... 90
See s. 533, Cr. P. C.
not signed by maker can be proved by parol evidence 97
in vernacular recorded in English ... 97

Conviction—

founded on co-accused's statements ... 61
unsustainable on co-prisoner's confession alone 62,64
for abetment on confession of co-accused ... 66
not illegal merely because it proceeds upon uncorrobo. testimony of an accomplice... 67
but of questionable propriety ... 71
accomplice's evi. alone not sufficient for 70
of a prisoner on uncorroborated evidence of accomplice made witness after pardon 71
proceeding upon accomplice's evidence not illegal if jury credits it 71
on uncorroborated testimony *not illegal* but unsafe (*See contra*) 71
although not illegal, accomplice's evidence should be corroborated 71
upon evidence of witnesses no better than accomplice 73
upon evidence of accomplice previously convicted on her own confession ... 74
generally unsafe, unless accomplice's evi. corrobrated in material particulars ... 75
without corrobn. approver's evidence not sufficient for 81

Conviction—*contd.* PAGE.

not bad if Judge points out desirability of corrobon. of approver's evidence and jury finds guilty on uncorroborated testimony and Judge accepts verdict... ... 82
should not be based on retracted confession without corrobn. 88
retracted confession sufficient for, if Court believes it true and voluntary ... 89
set aside where confession extracted keeping accused in police-custody for sometime... 90
based on evidence treated under s. 288, Cr. P. C. 92

Co-prisoner—

See Co-accused.

See Joint Trial.

Coroner—

examination of a witness on oath before a, admissible against him on his trial ... 6

Corroboration—

unsafe to convict on retracted confession without 58
statement of co-accused requires, in material particulars by indep., witnesses ... 62, 70
testimony of accomplices or approvers no... 61
confession of one prisoner not a corroborative evidence against another ... 63
as to details of crime without that as to persons of accused is worthless ... 63
unsafe to convict on accomplice's evidence without 68
necessity for, of evi. of an accomplice ... 70
necessary directly connecting prisoners with offence 70
must proceed from independent source ... 70
shewing identity of every person impeached 70

Corroboration—*contd.* PAGE.

of accomplice's evidence by his previous statements or by his fellow prisoner's testimony 70
English practice to be followed as to amount of 70
omission to follow established rule of practice as to 71
amount of, depends on circumstances ... 72,73
such as to fix defendants individually with guilt 72
not only as to circumstances but as to identity of all prisoners ... 72
of accomplice's evidence must be not only as to one but all persons affected by it ... 72
as to one prisoner does not entitle his evi. against another to be accepted without ... 72
instances of sufficient 72
not necessary of evidence of witness erroneously treated as accomplice ... 74
necessary of evi. of informer cognizant of offence but omitted to disclose six days ... 78
required of evidence of witnesses taking active part in a crime 78
evidence of secondary accomplice does not require so much, as that of primary accomplice 79
evidence of approver not sufficient for conviction without 81
should arise from other evidence ... 81
approver's testimony as to identity of accused requires, by independent evidence ... 81
co-prisoner's confessions not sufficient ... 81
necessary in re. identity of each accused ... 81
exact correspondence in details of several statements made by an approver is no ... 81
conviction not bad if Judge points out desirability of, and jury finds guilty on uncorroborated testimony ... 82

Corroboration—*concld.* PAGE.

evi. of witness admitting to have committed breaches of law with, but not open to same charge as, accused requires no ... 82
evi. of accused who has confessed or been admitted as an approver and detained in police-custody up till time of trial is open to greatest suspicion in absence of ... 84
retracted confession requires far more, than sworn testimony of accomplice ... 89
retracted confession requires indep. ... 89
no rule of law that retracted confession no evidence without ... 89
two sets of evidence cannot corroborate when each requires 91
by evidence brought in under s. 288, Cr. P. C. 92

Court—

not to draw inference of waiver against accused 44
refused to convict on uncorroborated evidence of accomplice 74

Criminal Procedure Code—

S. 159—

Magte. deputed under, recording accused's statement (*See Magistrate*) 26, 59

S. 162—

placing a witness before a Mgte. not competent to deal with case and asking him to record his statement under s. 164, Cr. P. C., is against policy of law underlying in 32
Statement by accused to police-officer under, inadmissible agst. him 33
document containing such statement no evidence against accd. 57

Criminal Procedure Code—*contd.* PAGE.

See Recording of Statement or Confession.

statement inadmissible under, as giving informn. relating to any fact discovered thereby 93

See s. 27, *Evidence Act*—

cl. (2) of, excludes from its operation dying statements made to a police-officer during police investigation 101

dying declarations taken down under, by head-constable 105

S. 164—

deals with confessional statement during police investigation 22, 59

statements contemplated by, shd. be recorded as evi. under ss. 355, 363, Cr. P. C. 25, 31, 59

confession, as provided by s. 364, Cr. P. C. 25, 31

provides only for recording voluntary *confession* and not statements elicited under ss. 209 and 342, Cr. P. C. ... 25

Deputy Magistrate deputed under s. 159 Cr. P C, recording accused's statement should record under 26, 59

enables Magistrate to record statement of witness as well as accused ... 26

Magistrate to record circumstances ... 27

if statement and not confession recorded under, it shouid be on oath ... 26

formalities observed in recording under ... 27

Magte. not competent to hold enquiry while recording confession should record under 28

not necessary to shew under, Magistrate had jurisdiction to hold prelim. inquiry 28

confession to be signed by accused and Magte. and Magte. to certify under ... 28

thumb mark not a signature under ... 28

in absence of prejudice objections that are not fatal to express directions of ... 29

Criminal Procedure Code—*contd.* PAGE

provisions of, do not apply to recording confession by Magistrate examining witnesses preparatory to commitment ... 30
provis. of, apply where some other Magte. takes confesn. and forwards to a trying Magte. 30
has no appln. to town of Cal. nor of Bom. 31
statement or confession thought not taken under, admissible against prisoners ... 31
does not warrant Magistrate to record witness's statements in order to fix them in view of subsequent trial ... 31
Magte. to ascertain how long accd. in police custody before recording confsn. under 32
evidence of witnesses taken under, Judge's duty in jury trial 32
police-officer placing a witness before a Magte. nor competent to deal and *asking* him to record under 32
statement of witness taken under, not admissible agst. his co-accd... ... 33
See s. 162, Cr. P. C. 32
See s. 80, Evidence Act 27, 32, 34
See s. 533, Cr. P. C. 97, 98
S. 202—See *statements* 35

S. 209—

exam. of accused under, for purposes of enabling him to explain any circumstances appearing in evidence against him 25, 43
authorises Magte. holding enquiry into cases triable by Court of Sessions or High Court to examine an accused person ... 43

S. 255.—

admission of guilt by accd. when asked under 25
distinction between admission of guilt under, and examn. of accused recorded under, s. 364, Cr. P. C. ... 25

Criminal Procedure Code—*contd.* PAGE.

S. 287—
examn. of accd. duly recorded by committing Magte. to be read as evi. in Sessions trial 44
meaning of committing Magte. in ... 48
S. 288—
meaning of committing Magte. in ... 48
evidence brought in under, cannot be accepted as proper corrobn. of a confession retracted 92
evidence taken before committing Magistrate treated as evidence under, at Sessions trial and conviction thereon ... 92
retracted confession cannot be corroborated by admitting evidence under, of witnesses given before Magistrate but retracted at Sessions 92
statement of an approver before Magte. inadmis. as evi. under, after he had retracted that statement and his pardon cancelled 92
where, has no application 93
S. 298—
admissibility of confession made while in police-custody : duty of Judge under ... 57
Sessions Judge's duty to determine questions ot admissibility of retracted confession in a jury trial 91
admissibility of dying declarations is a question for Judge in jury trial under ... 102
337—
Local Govt. no power to offer pardon under 84, 85
evidence of accd. taken under pardon so offered inadmissible 84
339—
confession made under promise of pardon admissible under 39

Criminal Procedure Code—*contd.* PAGE.

Sessions Judge's power to omit ... 85
where such commitment not open to objection 85
pardon forfeited under 87
Dy. Commr. trying exclusive Session case under s. 30, Cr. P. C. tendering pardon 84
no cancellation or withdrawal of pardon 87
statement made after acceptance of pardon under 87
where no withdrawal of pardon necessary 88

S. 342—

provides examn. of accd. at any enquiry or trial 43
———for purpose of enabling accused to explain any circumstances appearing in evidence against him 43
is *imperative* and not merely permissive ... 43
terms of, *mandatory*, not discretionary ... 43
applies to accd. before a Sessions Judge even when committing Magte. examined generally 44
even in a summary trial Magte. bound to record a summary of accd. examn. 44
exam. under, strictly limited to explaining circumstances standing against accused 44
empowers Court to examine accused to explain evidence already recorded ... 45
statement made by accused under, cannot be used to fill up gaps in prosn. evi. ... 45
meaning of accused person in ... 45
object of, not to convict prisoner out of his own mouth 45
nor to cross-examine him 45, 46
improper to cross-examine under ... 46
no exam. under, shd. be made when pros. evi. does not establish any criml. charge 46
———but such statement not inadmissible on account of irregularity of procedure 46

Criminal Procedure Code—*contd.* PAGE

statement relevant as *prima facie* admission under s. 21, Evi. Act ... 47
exam. of accused under, should be recorded as prescribed by s. 364, Cr. P. C. ... 47

SS. 355-363—
deal with mode of recording evidence and relate to statements of witnesses ... 25, 59

S. 364—
includes all statements amounting to confession or not, made in Court by accused ... 22
distinction between s. 255, Cr. P. C., and ... 25
confession to be recorded as prescribed by, 25, 59
confession to be signed by accused and Magte. and Magte. to certify under ... 28
Magte. examg. witnesses preparatory to commitment shd. record confession under 30
confession or statement to be recorded in manner specified in 31
s. 21, Evi. Act, subject to special proviso of 26
has no appln. to statement and confession recorded by Presy. Magte. in course of police-investigation 31
statements recorded under, should be in accused's own language 29
examn. of accused to be recorded in manner prescribed by 47
defects cured by, s. 533, Cr. P. C. (*See* s. 533, Cr. P. C.) 25, 97, 98

S. 371—
determination of admissibility of dying declaration under 103
See Dying Declarations.

S. 494—
accused at a joint trial discharged under, competent witnesses 74

Criminal Procedure Code—*concld.* PAGE.

S. 523—

in inquiry under, confession to police-officer though inadmissible may be admissible as admission under s. 18 Evi. Act ... 53

S. 2533—

can cure defect of form only, not of substance 25, 98
irregularity of not recording accused's statement in his language 29
views of Calcutta High Court on the point 29
defect in recording confession or statement under ss. 164 and 364, Cr. P. C. not curable under (*See contra*) ... 31
does not apply to statement and confession reccorded by Presy. Magte. ... 31
gives power to remedy defects in procedure in recording confession 97
confession not signed by maker may be proved by parol evidence under ... 97
confession made in vernacular recorded in English 97
object of 97
oral evidence admissible under, to prove confession duly made but in recording provisions of law not complied with ... 98
applies to all cases in which directions of law not fully complied with ... 98
applies to omission as well infraction of law 98
a case where High Court directed Sessions Judge to take evidence under ... 98
absence of Magte's. certificate on second page 99

Custody—

under s. 26, Evi. Act 24
accused in, as complainant 7
presumption of, when witness sent up by Police 31

Custody—*concld.* PAGE.

of a keeper in jail in a Native State ... 52
in absence close, confession to jailor in Native State evi. under s. 26, Evi. Act ... 52
confession extracted keeping accused in ... 90

Defect—

in recording confession how cured ... 25
of form only cured by s. 533, Cr. P. C., and not of substance 25, 98

Definition—

of *Admission* 3
of *Confession* 3
————by Sir James Stephen ... 3
————its general acceptance by Indian Courts 3

Deposition—

of witnesses in a counter-case as evidence against them as accused persons ... 7
————but only evidence against makers ... 7
of an approver before committing Mag. if conditional pardon withdrawn, against his accomplices 82
of dying person 102
of murdered person taken before Magistrate and Medical evidence should be annexed to Sessions record ... 106

Detective—

act of, supplying marked money ... 76

Distinction—

between *admission* and *confession* drawn by English Law 3
————by Evi. Act 3
between admission of guilt by accused under s. 255, Cr. P. C., and his exam. under s. 364, Cr. P. C. 25

Distinction—*concld.* PAGE.

between spy and an accomplice ... 76
between primary and secondary accomplice 79
between dying declaration and examination on oath 109

Discovery of Facts—

when no facts discovered in consequence of information 54
intended by s. 27, Evi. Act is physical act of finding 94
finding of thing proves information true ... 95
statement not leading to any, inadmissible 95
must be in consequence of *information* ... 95
by *act* of accused cannot be proved ... 95
contra view 95
incriminating statement to police and nothing discovered in consequence 53
when confession made thro. police-officer offering inducement, his evi. as to ... 55
in consequence of *information* of one of several accused persons 96
whatever nature of, fact must be relevant to the case 96
so much of *information* can be proved as leads *directly* and *immediately* to ... 96
when to let in *information* leading to ... 96
production of a thing unconnected with commission of crime 96

Dying Declarations—

See. Evi. Act, s. 32 :—
admissible in crim. as well as civil cases ... 99
English law differs in this respect ... 99
relevant, whether or not declarant in expectation of death 100
English law differs in this respect ... 100
principle upon which admitted ... 100

Dying Declarations—*contd.* PAGE.

only admissible to prove *cause* and *circumstance* of death and not previous or subsequent transaction 100
must not include hearsay or relevant matter 100
opinions generally inadmissible ... 100
exception 100
to police-officer during police investigation excluded by s. 162, (2), Cr. P. C. ... 101
instructions in B. P. Code regarding ... 101
———— in B. P. Manual ... 101
admissibility of, a question for Judge in a jury trial under s. 298, Cr. P. C. ... 102
such deposition admissible, subject to s. 33 Evi. Act, without further proof ... 102
See s. 33, *Evi. Act*
proof of, when not taken in presence of accused 102
persons that can prove 102
———, refresh memory from 102
how to record deposition of a person ... 103
should form part of Sessions record ... 103
determ. of admissi. of, under s. 371, Cr. P. C., by S. J. 103
admissible in all criminal cases and not confined to cases where injured person's death sole object of enquiry ... 104
in recording, Magte. shd. put on record declarant's answer as to his belief in his approaching death 104
must be some evidence of state of deceased person at time making 104
before a Magte. who was not committing Magte. not admissible without proof ... 104
in presence of neighbours 104
admitted under s. 32 (1), Evi. Act ... 104
not admis. unless declarant's death ensued 104
"or who cannot be found" &c., in s. 32, Evi. Act, has no appln. in conn. with ... 105

Dying Declarations—*contd.* PAGE.
taken down in writing under s. 162, Cr. P. C., by head-constable should be formally proved and put in 105
not proper to allow constable to give orally purport of 105
answers by signs as 105
admissible in charge of rape 105
depn. of person murdered and medical evi. shd. be annexed to Sessions record ... 106
must be taken in presence of accused ... 106
otherwise writing cannot be admitted to prove statement made 106
writing may be used to refresh memory ... 106
————————may be proved by person who heard it 106
when signed by declarant document must be put in and neither copy nor parol evidence admitted to supply omission ... 106
recorded in accd's. absence and difft. language 106
admissible under s. 32, Evi. Act ... 106
how to prove a 107
exact questions and answers to be set out in recording 107
not to be admitted in absence of evi. shewing how declarant's death was caused ... 107
inadmissible if declarant not a competent witness under s. 118, Evi. Act ... 108
of an accomplice admissible 108
must state facts and not mere opinions ... 108
not necessary that examn. of deceased shd. be in manner of interrogating a witness ... 108
though any departure from this may affect credibility of 108
should be *complete* conveying whole declarant intended to say 108
actual words and not merely their *substance* to be proved 108
may be oral or written 109

Dying Declarations—*concld.* PAGE.

if in answer to leading questions ... 109
their weight may be impaired ... 109
ready written 109
distinction between examn. on oath and ... 109
by a child, when inadmissible 109
————when admissible 109
effect of 109

Dying man—

how to record deposition of a ... 102
competent as a witness 107
but if considered incompetent under s. 118, Evi. Act, his declaration inadmissible ... 108
if an accomplice, his dying declaration admissible 108
not necessary that examination of, should be in manner of interrogating a witness ... 108
though any departure from this may affect credibility of declaration 108
actual words of, not merely their *substance* to be proved 108

Evidence—

rules of, before Evi. Act of 1872 was passed 1
————, in Courts in Presy. Towns ... 1
————————outside Presy. Town ... 1
English law of, not law in Moffusil ... 1
rules of, in Hindu and Mahomedan law not binding on Moffusil Courts ... 1
authority on point 1
statement or confession of one prisoner made in absence of another is, against himself 4
king's (*See King's Evidence*) 5
complaint to Police by person in custody as, (*See Complaint*) 7
deposition of witnesses in counter-case as (*See Deposition*) 7
of confession subject to imperfection attaching to hearsay 12

Evidence—*contd.* PAGE.

parol, taken to admit confession not signed by accused 28
of a police-officer of accused's statement as confession under s. 25, Evi. Act. ... 51, 56
statement to Police, not legal ... 53, 57
confession before Magistrate retracted at Sessions is, against maker 58, 90
————but unsafe to convict without corroboration 58, 88
statement of co-accused not technically an 61
————, convic. founded on it a case of no 61
confession of one prisoner is no corroborative, against another 63
confession of co-accused if proved is of weakest kind 64
————if uncorroborated, not sufficient to warrant conviction 63
confession of prisoner tried jointly for same offence is, of defective character ... 65
infirmities of co-prisoner's confession as ... 65
statement of accd. at jt. trial, not amounting confession is, agst. maker only ... 65
unsafe to convict on accomplice's, without corroboration 67, 73
of accomplice tainted 69
misdirection if Judge does not point out danger of trusting accomplice's ... 69
of accomplice alone not sufficient for conviction 70
identity of every person impeached by an accomplice to be corroborated by independent 70
of an accomplice cannot be corroborated by his previous statement 70
———— nor by his fellow-prisoner's ... 70
conviction on uncorroborated, of an accomplice made witness after pardon ... 71
conviction proceeding upon, of accomplice not illegal if jury credits it 71

Evidence—*contd.* PAGE.

———, Judge's duty to convict if believed to be true 71
of an accomplice to be corroborated although conviction not illegal ... 71
corrobn. of accomplice's, as to one prisoner 72
conviction upon, of witnesses no better than accomplices 73
of an accused acquitted but re-arrested on Govt. appeal against his co-accused ... 74
of a witness erroneously treated as an accomplice 74
of persons bribing against bribed ... 75, 77
where, of approver sufficiently corroborated 75
of an informer, cognizant of offence and omitting to disclose 6 days 78
of primary and secondary accomplice ... 79
of persons subscribing to bribe ... 80
of persons liable to punishment ... 81
of an approver 81
of a witness admitting to have committed breaches of law with, but not open to same charge as, accused 82
before approver's, could be used against accused, latter to be given opportunity to cross-examine him 82
of accused, made approver and detained in police-custody up till trial 84
of accd. taken under pardon granted by Local Govt. wholly inadmissible ... 84
no rule of law that retracted confession cannot be treated as, without corrobn. ... 89
two sets of, each requiring corrobn. brought in under s. 288, Cr. P. C. 91
brought in under s. 288, Cr. P. C. ... 92
where accused's own confession is only ... 92

Evidence Act—
draft Bill of by Sir Henry Maine, December, 1868 2

Evidence Act—*contd.* PAGE.

second Bill by Sir James Stephen, March 1872, known as Act I 2
based on English law of evidence modified to suit India 2
consequent difference between English and Indian law of evidence ... 2
————difference very marked in regard to law of confession on certain points 2
term *admission* defined by s. 17 of ... 3
no definition of term *confession* by ... 3
what is a *confession* within meaning of ... 3

S. 3—

statement of co-accused not technically evidence within meaning of 61

S. 8—

confession of guilt to a police-officer not admissible under Explanation [1] of ... 51
statements made while pointing out scene of crime under 95
statements accompanying production of articles under 95
statements explanatory of acts they *accompany* under, (*see contra*) 95

S. 17—

defines *admission* 3

S. 18—

confession made to a police-officer though inadmissible may be admissible for other purposes as an admission under ... 53

S. 21—

subject to special provisions enacted by ss. 24, 25 and 26 Evi. Act and ss. 164 and 364, Cr. P. C. 26
statements of accd. examd. prematurely by trying Magte., if free and voluntary are relevant *prima facie* as admission under ... 46

Evidence Act—*contd.* PAGE.

S. 24—
confession not made to a police-officer and not improperly obtained as in, admissible 8
confession influenced or caused by inducement, threat or promise irrelevant under 23
————relevant if made after *removal* of such impression, (*See s. 28. Evi. Act*) ... 23
duty of Sessions Judge before holding confession relevant under 32
confession duly recorded and certified under s. 164, Cr. P. C., admissible against maker unless shut out by 33
inducement must proceed from person in authority 36
person in authority not defined by ... 36
throws burden upon party making confesn. 42
confesn. to Punchayet not excluded by ... 55

a safeguard to prevent practice of oppression in extorting confession ... 23
its terms *imperative* 23
"police-officer" used in widest sense in ... 23
confession to police-officer under any circumstances is excluded by 23
inadmis., even if made in presence of Magte. 23
its provisions *unqualified* ... 23
evi. of police-officer in regard accd's. statement prelim. to arrest inadmis. under 23, 51, 56
cofesn. of person tried jointly with anr. may be proved in another's favour altho. inadmis. agst. maker under, or s. 26, Evi. Act 24, 52
applies to every police-officer ... 48
a Deputy Commr. of Police in Calcutta a "police-officer" within meaning of ... 49
confesn. to a police-officer inadmis. under ... 52
————except so far as proved by s. 27, 53

Evidence Act—*contd.* PAGE.

statement taken prelim. to arrest inadmissible under 66

See ss. 26, 27, Evi. Act—

S. 26—

does not qualify s. 25 23
gives further safeguard to accd's. interest ... 23
meaning of 24
confesn. to private person in immediate presence of Magte. 24
no formal arrest necessary under ... 24
what is sufficient custody under ... 24
instances of custody under 24
confesn. of person tried jointly with another may be proved in another's favour altho. inadmis. agst. maker under s. 25 or ... 24, 53
confesn. to police-officers while in police-custody 52
in absence of close custody confession to jailor in Native State evi. under ... 52
includes *police-officer* and Magistrate of Native State as well of British India ... 52, 59

See s. 27, Evi. Act... .. ... 93, 95

S. 27—

confesn. to police-officer inadmis. under s. 25, Evi. Act, except so far as provided by ... 53
where no fact discovered in consequence of informn. 54
so much of any informn. (otherwise inadmis. under ss. 25 and 26, Evi. Act or s. 162, Cr. P. C.,) *as relates to* any fact discovered thereby admissible under ... 93
qualifies, s. 24 93
confession inadmissible under ss. 25 and 26, Evi. Act, yet facts discovered in consequence proved under 93

Evidence Act—*contd.* PAGE.

operation of, restricted to informn. from person accd. of any offence and in police-custody 94
confesn. made by persons accd. but *not* in police-custody or in police-custody but *not* accd. or neither accused nor in police-custody inadmissible under, even if any facts discovered in consequence ... 94
as a proviso to ss. 24, 25, 26 should be strictly construed and applied ... 94
not intended to let in a confession generally but only a particular part leading to discovery of facts 94
discovery intended by, is physical act of finding upon search 94
————————————, finding of thing proves information true 95
————————————, correctness of accused's statement ground of its admisn. 95
statements admitted by, are those preceding finding upon such inquiry 95
————————not leading to any discovery inadmissible under 54, 95
————————made while pointing out scene of crime not admissible under ... 95
may be admissible as "conduct" under s. 8, Evi. Act 95
statements accompanying production of articles inadmissible under 95
————————admissible as "conduct" under s. 8, Evi. Act 95
statement explanatory of acts they accompany may be proved as "conduct" 95
contra 95
construction of "as relates distinctly" in ... 97

See Discovery of Facts.

Evidence Act—*contd.* PAGE.

S. 28—

confesn. after *removal* of impression causesd by inducement, threat or promise relevant under 23
confession not made after impression caused by promise had been fully removed inadmissible under 52

S. 29—

confession made under *deception* or *artifice* such as promise of secrecy, &c., admissible under, if otherwise relevant ... 7, 37

S. 30—

is an exception to general rule 60, 67
meaning of, "take into consideration" in ... 62
————————Court's discretion 62
must be read subject to previous sections on confession 62
confession inadmissible under ss. 24, 26 and 27 is inadmissible under, both against maker and co-accused ... 62
————————but if admissible agst. maker also admissible agst. others affected by it 62
only so much of informn. as was immediate cause of discovery of some relevant fact ... 63
wording of, shews confession merely an element in consideration of evidence ... 63
————————unless something more, conviction on it a case of no evidence ... 63
object of, explained 64
to be construed with great strictness ... 64
when two sets of prisoners tried jointly upon different charges, statements should not be considered under 64
statements of accd. persons taken by police-officer, prelim. to arrest inadmissible under 65

Evidence Act—*contd.* PAGE.

S. 32—

confession of accd. dead, admissible under... 67
provisions of, exception to s. 60, Evi. Act. ... 99
cl. (1) of 99
illustration (a) to 99
relevancy under, of dying statement not taken in accused's presence ...102, 104
first part of, no appln. to dying declarations 105
"verbal staements" in 105
relevant fact to be proved under ... 106
if declarant incompetent under s. 118, his dying deposition inadmis. under ... 108

S. 33—

dying deposition. duly recorded admissible iu evi. subject to, without further proof ... 102

S. 60—

S. 32 Evi. Act is exception to provision of ... 99

S. 80—

confession made before Magistrate in a Native State admissible under ... 27
confession unless made in accordance with s. 164, Cr. P. C., not admissible under ... 32
confesn. not bearing Magte's. cert. as required by s. 164 (3) inadmis. under, without proof of its having been made ... 32
presumption raised by 34
no presumption in respect record of confession made in English under 30
does not render any evidence admissible ... 34
but dispenses with necessity for *formal proof* of certain documents taken in accordance with law 34
a document must be taken in accordance with law to be admissible under ... 34
confession not taken down in accordance s. 164, Cr. P. C. not admissible under ... 34

Evidence Act—*concld.* PAGE.

three presumptions raised in favour of documents purporting to be depositions or confessions under 34

S. 110—

See Accomplice 67

S. 114 (b)—

latter half of s. 133, Evi. Act to be taken into considn. along with presumption of Court mentioned in, ... 67
is a rule of guidance 73
read with s. 4 Evi. Act 73
presumption as to an accomplice 73

S. 118—

dying declarations inadmis. under s. 32, Evi. Act, if declarant incompetent under ... 108

S. 133—

See Accomplice ... 67
an accomplice a competent witness under ... 67
latter half of, to be taken into considn. with presumpn. of Court in s. 114 (b) ... 67
is a rule of law but s. 114, illus. (b) is a rule of guidance... 73

Examination—

written, of a prisoner on oath not admissible 5
——— if taken by mistake, when may be admissible ... 5
of a person upon oath as a witness before a Coroner admissible against him ... 6
of accused by way of cross-examn. during police-investigation ... 32
of accused in police-custody by Magistrate during police-investigation ... 32
of accd. under ss. 209 and 342, Cr. P. C. 43

Examination—*contd.* PAGE.

of accused under s. 342, Cr. P. C., strictly limited to explaining any circumstances appearing against accused ... 44
even in summary trial Magte. bound to record a summary of accd's. examination ... 44
of accused under s. 342, Cr. P. C., cannot be used to fill up gaps in prosn. evi. ... 45
of accd. in respect his previous conviction ... 45
of accused, cannot be used as addl. evi. ... 46
of accused, still less for ascertaining what witnesses accused intends to call or what his evidence is ... 46
of accd. as a prelim. proc. and before evi. recorded ... 46
of accused to be recorded in manner prescribed by s. 364, Cr. P. C. ... 47
of accused shd. not be made by Magte. when prosn. evi. does not disclose any criml. charge ... 46,47
of accd. in middle of prosn's. case ... 46,47
Magte's. attestation *prima facie* evi. of ... 47
whole of accused's, before Magte. should be put in at Sessions ... 48
of accd. *duly recorded* evidence unders. 287 Cr. P. C. 44
of accd. to be made *after* some evidence recorded against him 45 46
of accused about a confession inadmissible in evidence ... 47
evidence for or against accused ... 48
prosn. has no discretion to put it in or not 48
of accused to be taken down in words and language of accused ... 48
verification of accd's. not admissible ... 48

Of Witnesses, See ss. 355-363, Cr. P. C.

extra judicial confession whether evidence against accd. ... 56

Illegal Pressure— PAGE.

not to be presumed in absence of evidence... 41

Inducement—

confession made in consequence of ... 4, 36
confession procured by, proceeding from person having no authority ... 37
confession made through, by "person in authority" ... 37
held out by any one in presence of person in authority ... 38
must have reference to *charge* ... 38
as to one charge does not affect difft. charge 38
regarding collateral matters ... 38
to gain advantage of temporal nature ... 39
moral or religious exhortation not an ... 39
advantage or evil must have reference to *proceedings* against accused ... 39
spiritual advice to confess not an ... 39
various expressions held to be ... 39
principles on which expressions regarded as 39
ceased to operate how to determine ... 42
police-officer offering, to accused to confess 55
——— no part of his evidence as to discovery in consequence admissible ... 55

See Person in Authority

Information—

See Discovery of Facts.

Informer—

action of an, in suggesting or initiating a criminal offence is itself an offence ... 76
cognizant of an offence but omitting to disclose six days though not accomplice his evidence requires corrobn. ... 78

Joint trial—

confession to a police-officer by one accused may be proved against another in a ... 52

Joint trial—*contd.* PAGE.

person whose confession to be used at, must be person who is *being tried* ... 60
if maker of confession pleads guilty, his confession cannot be considered as against those taking their trial at 60
contra 60
nor can it be used at, if confessing prisoner has to be dismissed from proceedings ... 60
————————, if plea of guilty not accepted he is still being *jointly* tried with the rest 60
same time and *same offence* 60
when to use co-prisoner's confession at ... 60
confession cannot be expanded to incriminate persons other than maker ... 60
exculpating statement not to be considered against any besides maker at ... 61
use of confession of persons accused of offence of same definition arising out of single transaction at 61
conviction on co-accd's. confes. alone at ... 61
————founded on such confession bad ... 61, 62

See s. 3, *Evidence Act.*

proper mode of summing up when several persons tried together on evi. not identical 63
effect of one's statement against co-accused at, when Court holds former not guilty ... 63
confessions made by accused persons at, not to be treated as *evidence* of accomplice against one another 64
————conviction based solely on evidence of co-prisoner 64
co-prisoner at, has right to demand his co-accused's confessions strictly *proved* ... 64
————————, confession of prisoners tried jointly for same offence evidence of defective character 65

Joint trial—*concld.* PAGE.

prisoners tried jointly for offences separate but arising out of one transaction ... 65
or offences distinct, though cognate ... 65
if confession of one prisoner admissible at, it shd. be taken into considn. against all and not against maker alone ... 65
statement of prisoner in absence of co-prisoner at 65
confession and statement not amounting to confession at 65
statements inadmissible under s. 25, Evi. Act, against co-accused at 66
for abetment or attempt 66
accused discharged under s. 494, Cr. P. C., competent witness at 74
unfair to defer convicting accused pleading guilty at, in order to record their confessions against other accused ... 83
retracted confesn. shd. practically carry no weight at, against any but its maker ... 89

King's Evidence—

confession made under hope of being permitted to turn 5
refusing to give evidence at trial of his accomplice 5

Magistrate—

confession in police-custody inadmissible unless made in *immediate presence* of a 24
confession to a police-officer inadmissible even if made in *immediate presence* of a 24
confession to a private person in immediate presence of a 24
deputed under s. 159, Cr. P. C. 26, 59
if recording statement and not confession it should be on oath 26

Magistrate—*contd.* PAGE.

should record circumstances in recording statement or confession under s. 164, Cr. P. C. 27
confession made before, in Native State ... 27
duty of, to discover whether prisoner confesses voluntarily 27
to ascertain whether confession voluntarily made before and not after it had been recorded 28
signature and certificates under ss. 164 & 364, Cr. P. C. to confession by, ... 28
not competent to hold enquiry at the time recording confession 28
confession must be *bona fide* made to, and recorded by 28
presence of, not sufficient while confession made to police-officer 28
to ascertain how long accused in police-custody before recording confession under s. 164, Cr. P. C. 32
not competent to examine accused as a preliminary procedure 46
should not examine accused under s. 342, Cr. P. C. when prosecution evidence does *not disclose* any charge 46, 47
attestation of, *prima facie* evidence that statement made and proceedings regular 47
meaning of committing, in ss. 287 and 288, Cr. P. C. 48
of Native State 56, 59

See s. 26, *Evidence Act, and Native State.*

confession not properly recorded by ... 57
as a prosecutor holding out promises to persons to confess 57
if after due warning from a person admits before formal accusation ... 57
confession made before, but retracted at Sessions ... ...

Magistrate—*concld.* PAGE.

practice of taking prisoners before, not having jurisdiction 58
mere standing by of a, when confession made to Police 58
confession to a, who recorded it held subsequent judicial inquiry and committed to Sessions 58
effect of disqualification of, on confession ... 58
effect of memo. of, not being in exact form 58
confession to a village, ... 59
a village, not a police-officer 59
deputy, deputed under s. 159, Cr. P. C. recording statement of accused ... 59
sub-deputy, deputed to verify 59
shd. not convict upon evi. of witnesses no better than accomplices without corrobn. 73
erroneously treating a witness as an accomplice and granting pardon 74
confession in vernacular recorded in English by Native 97
to take down dying statement in presence of accused 102
in recording dying declaration, declarant's answer as to his belief in his approaching death should be recorded by ... 103
dying declaration before a, who was not committing Magistrate 102

Misdirection—

omission of Sessions Judge to warn jury that statement of one prisoner not evidence agst. his fellow prisoners is a, ... 66
if Judge does not point out to jury danger of trusting accomplice's evidence ... 69
if Judge directs jury person witnessing payment of bribe, &c., is not an accomplice 80
if Judge directs retracted confesn. cannot be treated as evi. unless corroborated ... 89

Munsif— PAGE.

confession to a village, not inadmissible ... 59

Native State—

confession to a first class Magistrate in a, can be proved under s. 80, Evi. Act ... 27
custody of keeper of a jail in a ... 52
"police-officer and Magistrate" in s. 26, Evi. Act, include those of 52, 59

Old Regulations— 1

Pardon—

conviction upon uncorroborated evidence of accomplice made witness after ... 71
magistrate erroneously treating a witness as an accomplice and giving him ... 74
withdrawal of conditional, and approver's deposition against his accomplices ... 82
withdrawal of conditional, and approver's trial with other prisoners then and there 82

trial should be separate and subsequent to his co-accused 82
withdrawal of conditional should be by authority granting it ... 82
local government no power to offer pardon under s. 337, Cr. P.C. ... 84,85
evidence of accd. taken under, so offered 84
dy. commr. trying exclusive Sessions case under s. 30, Cr. P. C. tendering ... 84
by local govt. not inducement or threat 85
when accd. accepting, forfeits it ... 86
cancellation of ... 87
statement made after acceptance of ... 87
where no withdrawal of, necessary ... 88
Statement of approver under s. 288, Cr. P. C. in Sessions after retractation and withdrawal of ... 92
(*See s. 288, Cr. P. C.*)

Person in Authority— PAGE.

See s. 24, Evidence Act.

not defined by s. 24, Evi. Act ... 36
as defined by Sargent, C. J. ... 36
test as to ... 36
generally persons engaged in *apprehension, detention, prosecution,* or *examination* of accused is a ... 36
persons held to be ... 36
medical officer of the regiment not a ... 37
member of a *punchayet* not a ... 37

See Inducement.

confession made through inducement by ... 37
inducement held out in persence of a ... 37

Police—

complaint to, by person in custody as evidence against him ... 7
instances of torture in extorting confesn. by 17,21
magistrate's presence not sufficient while confession made to ... 28
confession regarded with suspicion if obtained after illegal detention by ... 38
admission obtained by persuasion and promise by ... 55
allegations of restraint against, and Sessions Judge's duty ... 90

Police-custody—

confn. to a private person whilst in or not in 6,24
temporary absence of police escort ... 51
criminating statement made in ... 51
confession to a police-officer while in ...51,52.53
custody of keeper of jail in Native State ... 52
duty of Judge and not of jury whether while accd. making confession was or was not in ... 57

Police-custody – *concld.* PAGE.

confession to first class Magistrate of Native State while in ... 52
evi. of person who has confessed or been admitted as approver in, up till trial ... 84
confn. extracted keeping accd. sometime in 90

Police-investigation—

statement by accused during, to be recorded under s. 164 Cr. P. C. ... 22, 59
dy. magte. deputed under s. 159, Cr. P. C. ought to record accd's. statement according to s. 164 Cr. P. C. as at stage of ... 26, 59
statement and confesn. recorded by Presy. Magte. of Cal. and Bom. in course of ... 31
examn. of accd. by way cross-examn., during 32
dying declaration to police-officer during, excluded by s. 162 (2) 101

Police-officer—

confession to, absolutely inadmissible ... 23
term of, in s. 25, Evi. Act construed in widest sense 23
confesn. to any, under any circumstances to be excluded 23
confesn. to any, inadmissible even if made in presence of Magte. 23
statement of accd. taken by, prelim. to arrest 23, 51
placing witnesses before Magistrate not competent, and asking him to record statement under s. 164 Cr. P. C. ... 32
advising prisoner to confess and latter confesses after being cautioned by Magte. 41
offering inducement to accused to confess 42, 55
————discovery of facts in consequence 55
provisions of s. 25 Evi. Act applies to every 48
dy. commr. of police or police-patel or 'ten house gaung' 49
chowkidar a, (See *contra* also) 49
village Magistrate not a 49, 59

Police-officer—*concld.* PAGE.

evidence of, as to such statement ... 51
confesn. of guilt to a, while in police-custody 51
confesn. to a, inadmis. under ss. 25 and 26 Evi. Act 52
———, not admissible as "conduct" under s. 8 expln. (1) Evi. Act 51
of Native State 52, 59
confession to, may be proved by another co-accused tried jointly 52
———, not to be treated as evidence against maker 52
incriminating statement to 53
———, in self-exculpation 53
confession to investigating 53
———, admissible for other purposes than as a confession ... 53
statement by, that accused confessed, not to be placed on Magte's. record ... 54
not to be permitted to depose accused confessed to him 54
instances of admis. inadmis. statement to ... 55
who are and are not 55
acts illegally in offering inducement to accd. in making confession 55
admission, not being a confession of guilt to 56
evi. of, in regard to accused's statement ... 56
dying statement to, during police investigation excluded by s. 162 (2) Cr. P. C. ... 101
instructions to, how to record dying statement in B. P. Code 101

Presumption—

upon which confession is received ... 22
of restraint when witnesses sent up by police 31
raised by s. 80, Evi. Act 34
confession is voluntary 38
of illegal pressure 41
of Court mentioned in s. 114 (b), Evi. Act 67

Presumption—*concld.* PAGE.

an accomplice unworthy of credit unless corroborated 71

Principals—

persons taking active part in a murder are 79

Prisoner—

whole statement of, at time making confession to be taken together ... 4
confession or statement of a, made in absence of another 4
in custody, confession elicited from by questions 5
written examination of, taken on oath ... 5
————, if taken by mistake ... 5
statement of a person not being a, against him on a criminal charge 5
convicn. of, on his own uncorro. confesn. 7
confession of a, in one case cannot be used against him unless proved on oath ... 8
confession to a private individual if proved evidence against 8
reason of exclusion of statement of a, in cases where as admission unobjectionable to a Civil suit 12
constable advising a, to confess ... 41
in middle of prosn's. case question should not be put to 47
incriminating statement by, to police-officer 53
practice of taking, before Magte. not having jurisdn. 58
confession of, tried jointly for same offence evidence of defective character ... 65
tried jointly for offences separate but out of one transaction 65
————, or offences distinct tho., cognate 65
statement by, in absence of co-prisoner and conviction thereon 65

Prisoner—*concld.* PAGE.

convicn. of, on sole and uncorro. evi. of accomplice made witness after pardon ... 71

Promise—

of pardon, confession made under ... 39, 41
expressions held to involve 40
rejection of confession caused by ... 52
magistrate holding out, as an inducement ... 57

Retracted confession—

evidence against maker 58
unsafe to convict upon 58
requires independent corroboration ... 88
always open to suspicion 88
may be used against maker and not others tried jointly 88, 91
a judge ought to be satisfied whether a, voluntary or improperly induced 89
not inadmissible 89
sufficient for conviction if Court is satisfied confession voluntary and true 89
mere subsequent retractation not enough to make appear confession was unlawfully induced 89
practically carries no weight regarding persons other than maker 89
requires far more corroboration than sworn testimony of an accomplice 89
no rule of law that, cannot be treated as evidence unless corroborated ... 89
-, misdirection if Judge so directs
confession before Magte. retracted before Sessions is evi. agst. accused ... 90
confession retracted when read out by Magte. does not amount to a confession 90
should not necessarily be rejected if no evidence on record to support ... 90
Court bound to act upon, if believed ... 90

Retracted confession—*concld.* PAGE.

keeping accused in police-custody sometime and retracted at prelim. inquiry and before Sessions 90
where alleged confession obtained after restraint S. J.'s duty before admitting ... 90
former and subsequent statement 91
two sets of evidence each requiring corrobn. 91
admissibility of, at jury trial ... 91
cannot be corroborated by admitting evidence under s. 288, Cr. P. C. ... 92

Sessions Judge—

to satisfy by examg. Magte. how long accd. in police-custody if record does not shew it 32, 90
refusing to enquire into allegation of irregularity warning by Magte. and circumstances under which confession made ... 42
to examine police diaries, &c, when police-pressure alleged 42
to exercise cautious discretion in admitting evidence of a witness alleging pressure and threat by Police 43
———, should not rely upon such evidence without examining police-officer as to alleged restraint and pressure 43
not to admit retracted statements without enquiring into allegations of restraint by Police 90
duty of, when confession retracted and allegations made against police having extorted under pressure 89, 90, 91
———, when retracted confession tendered in evidence in jury trial under s. 298, Cr. P. C. ... 92
admis. of dying declaration a question for, in jury trial under s. 298, Cr. P. C. ... 102

Sessions Judge—*concld.* PAGE.

in determining admissibility of dying declarations under s. 371, Cr. P. C. duty of 103

Spy—

distinction between an accomplice and a ... 76
action of a, in suggesting and initiating a criminal offence 76

Statements—

incriminatory 3

See Confession.

admitting offences but explaining away facts standing against 4
not implicating deponent 4
inculpating co-accused but exculpating themselves 4
whole of prisoner's 4
one prisoner made, in absence of another 4
on oath by person not being a prisoner ... 5
not incriminating and not amounting to confession 8
reason of exclusion of a prisoner's, in cases where as admission unobjectionable in Civil suit... 12
by accused during police-investigation how to record 22
by accused in Court, how to record ... 22
of accused taken by police-officer preliminary to arrest 23
contemplated by s. 164, Cr. P. C., how to record 25
elicited by examination under ss. 209 and 342, how to record 25
by accused dealt with under s. 364, Cr. P. C. ... ...

Statements—*contd.* PAGE.

always to be recorded in accd's. language ... 29
————, irregularity not curable by s. 533 Cr. P. C. 29
made in vernacular recorded in English when inadmissible 30
or confession though not taken under s. 164, Cr. P. C. admissible agst. prisoner ... 31
made by accd. to police-officer under s. 162, Cr. P. C. 33
recorded during enquiry under s. 202, Cr. P.C. 35
two incriminating, by accd. one before Magte. another before police-officer ... 35
admitting crime but pleading compulsion ... 41
made after arrest and on way to Magte. ... 42
Magte's. attestation *prima facie* proof of ... 47
of accd, by police-officer prelim. to arrest ... 51
of accused to a friend in temporary absence of police escort 51
to a police constable on assurance nothing would happen to accused 52
to police-officer in self-exculpation ... 53
incriminating, to police-officer ... 53
————, when nothing is discovered in consequence of it ... 53
to police not legal evidence 53
instances of accused's, held admissible or inadmissible 55
of co-accused, not technically evidence ... 61
————, conviction founded on it ... 61
of co-accused, to be corroborated by independent witnesses 62
————, not by testimony of accomplice or approver 63
of person tried jointly with other not less of an admission by reason of Court not thinking him guilty of charge ... 63
by prisoner in absence of co-prisoner and conviction thereon 65

Statements—*concld.* PAGE.

not amounting to confession evidence against maker and others tried jointly ... 65
of accd. taken by police-officer prelim. to arrest inadmissible under ss. 25 and 30 Evi. Act 65
of witnesses obtained by restraint by police and retracted at Sessions and S. J.'s duty 90
former and subsequent ... 91
of approver before Magte. under s. 288, Cr. P. C. in Sessions after retraction and withdrawal of pardon 91
not leading to any discovery of facts inadmissible 95
admitted by s. 27, Evi. Act, *preceding* ... 95
accompanying production of articles ... 95
explanatory of acts they accompany ... 95

Threat—

expressions held to involve 40
confession made under 41
————, to Punchayet under ... 55

Uncorroborated confession—

a prisoner can be convicted on his ... 7
conviction should not be based solely on, of accomplice made witness after pardon 71
if believed, Judge's duty to convict ... 71
convic. based on, not illegal but unsafe ... 68, 71
of witnesses no better than accomplice ... 73
of accomplice previously convicted ... 74

Verification—

introduced by police circular condemned ... 54

Witness—

examination upon oath of, before Coroner against him on his trial 6

Witness—*concld.* PAGE.

incriminating answer objected to by, but compelled by Court 6
deposition of, in a counter case ... 7
statement of, how to record 25
————, to fix them down in subsequent trial and Magte's. certificate ... 31, 32
sent up by police, presumption of restraint 31
evidence of, taken under s. 164 Cr. P. C. Judge's duty in jury trial 32
to place a, before a Magte. not competent to deal with and ask him to record statement under s. 164 Cr. P. C. 32
statement of, under s. 164 Cr. P. C. inadmissible against his co-accd. 33
an accomplice a competent 67
in respect of credibility accomplices are not ordinary 69
an accomplice made, after pardon ... 71
no better than accomplice ... 73, 76, 79, 80
accomplice erroneously treated as ... 74
accused discharged under s. 494, Cr. P. C. competent 74
to payment of bribes, whether accomplice ... 78
evidence of admitting commission of crime with, but not open to same charge as, accused 82
accomplice to when Local Govt. made promise not to prosecute and by whom promise accepted not competent ... 85
statement of, obtained after restraint by and retracted at Session, S. J.'s duty ... 90
making statement to a police-officer or investigating Magte. whether evidence, agst. accd. under s. 288, Cr. P. C. ... 93

Press Opinions

THE LAW OF CONFESSION.

By S. ROY, *Bar-at-Law.*

Third Edition, Price Rs. 2.

"...To bring within the four corners of a book of 100 pages an exhaustive analysis and critical arrangement of the intricate subject of confessions is no slight task. But Mr. Roy has achieved it successfully. He has given the legal profession and the judiciary a text-book which should not only inform them of the law as it is, but shoufd also enable Bench and Bar more readily to detect and expose the many abuses that in practice occur in the matter of confession. We predict for the book a ready sale, and hope this is not the last time that Mr. Roy will figure as an author."—*The Statesman*, Dec. 7, 1902.

"...The preface deprecates any attempt to arrogate for the book a reputation of exhaustive or comprehensive treatment, but we are bound to say that a study of its pages will not lead the readers to endorse the unduly modest judgment. On the contrary Mr. Roy's notes are calculated to be of the greatest possible use, not only to the profession, but to the public at large.....The books such as Mr. Roy's are an absolute necessity."—*The Indian Daily News*, Dec. 8, 1902.

"...It is handy and exhaustive little compilation. It is thoroughly up to date and contains the latest decisions. We are sure that criminal practitioners,

police-officers and Magistrates exercising criminal jurisdiction will find the little book extremely useful."—*The Calcutta Weekly Notes*, Vol. VII, Dec. 8, 1902.

"...A handy little book...a *resumé* of all the Indian authorities upon the intricate matter of confessions... The practitioners, the Magistrates, and the police-officers will find Mr. S. Roy's little book a useful adjunct to their libraries; it will be welcomed by the law students. To the latter indeed...the book will be specially useful. It might in fact be well chosen by the Senate as a text-book upon the law of confessions in India."—*The Englishman*, Dec. 18, 1902.

"Mr. S. Roy's book on the *Law of Confession* will be found to be useful both by the Bench and the Bar. He has dealt with the subject in an able way. The classification adopted by him shows a thorough grasp of the subject...Students of law will also find the book useful."—*The Amrita Bazar Patrika*, Nov. 22, 1902.

"...Almost all the Indian cases and a few English cases showing bearing on the subject are given and conveniently arranged for purposes of reference. We have no doubt whatever that every practitioner will find it very handy and useful no less than Judges and Magistrates, specially those in the Mofussil who have to try criminal cases. We congratulate the author upon the production of a book which is bound to prove useful to the legal profession and has removed one of its much felt wants."—*The Indian Mirror*, Nov. 26, 1902.

"We have no hesitation in saying that Mr. Roy's little book will prove of great use both to the Bench and the Bar. It contains all the rulings on the subject of confessions up to date and has been very lucidly and concisely arranged."—*The Bengalee*, Dec. 7, 1902.

"The title of this work to Western ears suggests the priest in the confessional or questions about the

right of confessors to refuse to give evidence. But the book is in fact concerned with the law of India as to the admissibility of statements made by accused persons. That law is in the main statute law, depending on sections 24 to 30 of the Indian Evidence Act of 1872, which was drawn by the late Sir James Stephen, and corresponds pretty closely in form and substance with his 'Digest of the Law of Evidence.' In one respect that law differs materially from the law of England, in absolutely prohibiting the use in evidence of Confessions made to police-officer, or while in custody of a police-officer, unless in the immediate presence of a Magistrate. This prohibition is based on knowledge of the ways of the Indian Police, which have been revealed to the readers of Mr. Kipling. Besides giving the statute law on the subject, Mr. Roy refers to the very large number of cases which have been decided in the Indian Courts on the interpretation and application of the law, which will be of considerable utility to persons interested in comparative law or in the codification of criminal procedure."—*The Law Journal*, March 14, 1903.

We are more pleased than surprised to find that this excellent little work has run into a second edition. Mr. Roy's conscientious labour has been appreciated by members of his profession who, despite the enormous outturn of books on legal subjects, are not always able to rely fully upon the text they find presented. The lawyer-like quality of accuracy, however, is possessed by our author, and the busy practitioner who has experienced the aggravation and inconvenience of wrong references and propositions that are unsupported by the authorities cited will understand that no more valuable attribute can be predicated of one who compiles a law book.

The interest of his second edition is advanced by a new chapter on "The Evidentiary Value of Confes-

sion" which we earnestly commend to the study of those Judges of high or low degree who think that the end of a criminal case has been reached when some incriminating statement comes from the accused. The types and get-up of the book are excelient. . . . . We hope that Mr. Roy will be encouraged by his success in this work to break fresh ground. To the industry of text-book writers in the profession the English Law, as has been well said, owes a heavy debt; and our author is placing his fellows under no slight obligation by the manner in which he is carrying on the traditions of his English legal brethren. —*The Statesman*, 1st May, 1904.

The appearance of the second edition of Mr. S. Roy's little work on the "Law of Confession" so soon after the publication of the first edition is sufficient proof of our former opinion that the work was one that would be of use to the legal profession. The new edition has been brought up to date by the citation of all the most recent rulings and a large amount of new matter has been introduced upon the Evidentiary Value of Confessions. It is always a difficult question for a Court or a jury to decide what weight should be given to admissions of guilt, and though the Legislature has adopted many safeguards to purify the source of evidence in trials, the historic fact observed in England as well as in India that confessions generally appear when there is an absolute blank of incriminating evidence still make the acceptance of uncorroborated confessions a dangerous practice. A Magistrate with Mr. Roy's book at his elbow could avoid the alluring pitfal of confessions, and from wrong convictions more right convictions would ensue as a natural result. As we remarked on a former occasion it is a pity the authorities in passing legal practitioners through the mill of their curriculum do not add a practical work like the one under consideration as a subject for examination. It would throw a light upon the practical application of law in the mind of a

student that no amount of parrot-like code-cramming could effect.—*The Englishman*, 5th May, 1904.

We are glad to find that Mr. S. Roy's small book on the "Law of Confession" has run into a second edition. It does not surprise us, however; for, within a small compass Mr. Roy gives us in a clear and lucid way all that need and should be known both by the Judges and the legal practitioners on this important branch of Criminal Law. The present edition is somewhat bigger in size, and we are not sorry for it. The new chapter, dealing with the Evidentiary Value of Confession, will be greatly instructive to Judges who have to try and dispose of criminal cases. Not infrequently do a great many of our Judges, out of sheer ignorance only, send accused persons to jail by reason of what the latter themselves might have stated whereas as a matter of law such statements should never be relied upon for the purpose of a conviction; and we are confident that even a cursory perusal of Mr. Roy's book will enable these Judges to avoid such legal blunders in a large number of cases. We also notice with great pleasure that the present edition is not only brought up to date, so far as Indian law is concerned, but that a large number of recent English Rulings have been cited and discussed. The Index too has been given in a more thoroughly exhaustive form, and must, therefore, prove more useful to the Bench as well as to the Bar. We congratulate Mr. Roy upon the success of his book.—*The Indian Mirror*, 12th May, 1904.

The second edition of Mr. Roy's "The Law of Confession," just published by the *Weekly Notes* Press, seems to show the necessity of the publication of the report of the Police Commission. Here is a book of 145 pages necessitated by the peculiar habits of the Police of India who supplement any deficiency in proof by a confession. The result is that the law of criminal evidence resolves itself into the law of confession, and efforts of the Courts to support the efforts

of the Legislative to safeguard the prisoner against the Police. How uphill a job this has been is depicted in Mr. Roy's book, which has entered on a second edition, and is swelling visibly before one's very eyes. It was a *resumé*; now it is a book; in the third edition, it bids fair to become a work, and an extremely useful work as long as the Police will be a Police.—*The Indian Daily News*, 16th May, 1904.

We welcome the second edition of this handy little compilation. A great feature of this new edition is a complete and exhaustive Index which goes to enhance its value. A new chapter on "The Evidentiary Value of Confession" greatly adds to the usefulness of the work.—*The Calcutta Weekly Notes*, 16th May, 1904.

The appearance of the second edition of this admirable little book by Mr. Roy, so soon after the publication of the original edition, is sufficient proof of the excellence of the work. It therefore needs no special recommendation to bring it to the notice of the legal profession. Indeed, Mr. Roy's book is a necessary adjunct to every practising lawyer and it would be well for the public if the Government of India placed it at the disposal of every Magistrate in the country. The Magistrate is constantly brought face to face with the difficulty of considering how to record a confession and the circumstances under which it is alone of any material value as evidence in a case. The subject is an extremely complicated one, and the most experienced Magistrates, when put in the predicament of a prisoner wishing to confess, are apt to make mistakes and omissions. This would be safeguarded by the Magistrate having this little work of Mr. Roy's at his elbow, and as its cost is small, we would particularly invite the attention of the Government to the book.—*The Amrita Bazar Patrika*, 30th June, 1904.

This is a very handy little book for the criminal lawyer in which the whole law of confession is very systematically and concisely treated. It was not very

long ago that the first edition of this useful book was published and that edition being sold out Mr. Roy revised it and brought it up to date. We have carefully read the book and tested its accuracy and we have nothing but praise for the industry of Mr. Roy. We would suggest that in the next edition Mr. Roy would incorporate the various High Court Circulars bearing on the subject in order to enhance its usefulness.—*Lawyer*, June, 1904.

"A book that was passed through one edition in the course of a year does not call for a detailed reveiw. It has proved its usefulness in the most conclusive fashion and has answered the needs of the profession. The second edition, we are glad to note, has been brought up to date, and among the new matter introduced the chapter on the "Evidentiary Value of Confession" deserves special notice. In this most readable chapter, besides instructive extracts from standard authorities (including Lord Macaulay), will be found collected some cases of false confessions extracted under threat, false hope and oppression. Mr. Roy has freely noted Indian and English cases, has given the names and references of those cases in the body of the text, and supplied a very complete index. We have no doubt the busy practitioner will be deeply thankful to the learned author for a handy and exhaustive repertory of the case-law on an important and intricate subject.—*The Allahabad Law Journal*, Vol. II. p 68, February 16th, 1905.

The subject-matter of this book was first published in a serial form in *The Calcutta Weekly Notes*. It was then amplified and published in a book form in 1902. In this, its second edition, the book has been brought up to date and a new chapter on the Evidentiary Value of Confession has been introduced. This book contains all cases, English and Indian, upon the subject with which it deals; and will be appreciated by the profession as a handy vademecum on the Law of Confession.—*The Bombay Law Reporter*, Vol. VII. p. 239, October 15th, 1905.

THE LAW OF SANCTION TO PROSECUTE.

By S. ROY, *Bar-at-Law.*

Second Edition, Price Rs. 4.

Mr. S. Roy, Barrister-at-Law, is already favourably known to the public by an excellent little treatise on the "Law of Confession." He has now followed up his first success by a second: and the book upon the "Law of Sanction to Prosecute" which he has just published. bears such evident signs of accurate knowledge and intelligent research that we can have little doubt it will be as warmly welcomed by the profession as its predecessor. Mr. Roy says in his preface that he has compiled the book with the sole veiw of its being a handy work of reference to the busy practitioner on the branch of criminal law and procedure to which he relates. He is too modest. In a country where the administration of justice is deliberately confided to non-professional hands in so large a degree as in India, instruction and enlightenment are not required by practitioners alone. Not only the Bar but the Bench will find Mr. Roy's admirable compendium of the utmost value. Everything is clearly and concisely stated; and published as the work was in November last, it has the saving merit of being up to date. We must congratulate Mr. Roy on the fruits of his labours and when next there issues a book of his from the press, may it be as well and sensibly written as the present.—*The Englishman*, January 12th, 1905.

We welcome the re-appearance of Mr. Roy in the *role* of an author. His careful and accurate

work upon the "Law of Confession" was a guarantee that any text book from his pen upon a branch of Criminal Procedure would be useful to the legal profession. Within the compass of 230 pages Mr. Roy has compressed a clear and exact statement of the law and has arranged it under appropriate headings so that the particular point requiring elucidation can be found speedily. Indeed, no slight part of the value of the book is due to the excellent analytical scheme upon which it is planned. All the decided cases up to the date of publication are collected in their proper places and a full index enhances the convenience of the work for reference by the busy practitioner. We predict a ready sale for this handy scheme and consider that Mr. Roy has added to his reputation by a sound and conscientious piece of work.—*The Statesman*, February 9th, 1905.

This is a book which deals with one of the most intricate branches of the Criminai Law and Procedure, and as far as we are aware, it is the first and the only book on the subject. In his treatment of the question of sanction Mr. Roy has placed the whole law including the case law in a most thorough and exhaustive manner within the compass of the book which consists of about 300 pages. We have not the least doubt that as a special work on the subject of "Sanction to Prosecute" Mr. Roy's book will prove of immense value not only to the legal practitioners, both civil and criminal, but also to the Judges and Magistrates who have often to deal with the very important question of sanction. Like Mr. Roy's other work, we mean his "Law of Confession," which has gone through a second edition, this new work on "Sanction to Prosecute," we may safely predict, will have a large and speedy sale.—*The Bengalee*, December 24th, 1904.

" This little manual treats of a branch of criminal law and procedure which is of interest to the practitioners in India, but has no application in this country.

Care has evidently been expended on its compilation."
—*The Law Times*, February 25th, 1905.

This is certainly a much bigger book than its predecessor, we mean, the *Law of Confession* which, by the way, has already run into a second edition as noticed in these columns a few months ago. As a sound, industrious and energetic author, Mr. Roy needs no introduction inasmuch as within a couple of years he has brought out two very important and useful books on those intricate and difficult branches of Criminal Law and Procedure, namely, "Confession" and "Sanction to Prosecute." Every one who has to deal with law in his capacity either as a lawyer or a Judge must bear testimony to the indubitable fact that often he had to grope in the dark whenever he had occasion to solve some problems bearing on these subjects, the law relating to them being so diffuse and scattered and, if we may be permitted to say, ill-arranged in various enactments. We can confidently say that our author in putting the law and procedure bearing on those particular subjects in a definite and compact form has done an incalculable service to the legal profession. His first book on "Confession" has already established his reputation as a thorough and sound criminal lawyer and we have not the least doubt that this new book on "Sanction to Prosecute" will go still more to enhance it.

On coming to the book itself we find the first chapter, under the head of "Introduction" gives in a very clear and lucid language all that one requires to know on the subject of sanction. We frankly admit by simply looking through this chapter alone a student of law will have a much clearer idea of law on sanction to prosecute than by pouring through the pages of the Code of Criminal Procedure for a life-time. The classifications and the general arrangements of the book unmistakably show the author's thorough mastery of it and leave nothing more desirable. Numerous decided cases cited in the book under

suitable heads will, we have no doubt, be of immense use to the busy practitioners as well as Judges and Magistrates. As regards the accuracy of references we may note that we have tested them very critically and failed to find any flaw or mistake. We can, therefore, with confidence, recommend Mr. Roy's *Sanction to Prosecute* as an excellent book of reference to the legal profession. Besides the law and case-law, the book contains a very useful Schedule giving the various sections bearing on the law of sanction, not only of the present Code of Criminal Procedure but also their corresponding sections in the old Codes in a tabular form. As every practitioner is aware how often he has to hunt old Codes in order to give proper interpretation of a certain decision, this Schedule will prove a great boon for comparative study and easy reference, no less for tracing the gradual growth and development of law of sanction. The last, though not the least, feature of great importance of this book is its Index which, we are perfectly satisfied, could not have been fuller and more exhaustive. For sooth, by going through the Index one can learn a good deal on the subject of sanction and much quicker too, as it gives a short of *resumé* of the entire book. We doubt not this new book will command a large sale, which it deserves.—*Amrita Bazar Patrika*, December 9th, 1904.

MR. S. ROY, BAR-AT-LAW, HAS BROUGHT out another book which, like his *Law of Confession*, will prove extremely useful to the legal profession. This time he has tackled "The law of Sanction to Prosecute." It is a bigger and more complicated subject than the law relating to confession by criminals, and the difficulty to handle or master it becomes greater when one is confronted with the conflicting decisions of various High Courts, and not infrequently of the same High Court. In presenting the legal public with an exhaustive treatise on such a subject, Mr. Roy has rendered it an invaluable service, and placed

it under immense obligation. Within a small compass, Mr. Roy has given all the law on the subject with its interpretation up to date by the various High Courts in India. While the exhaustive index of the book makes reference to its contents very easy, its Schedule gives full texts of the different sections of the new Code of Criminal Procedure bearing upon the subject, together with the corresponding sections of the older codes in parallel column. We have no hesitation in saying that by its publication, Mr. Roy has removed a want which was largely felt by the legal public, and that it will prove extremely useful and handy both to the Bench and the Bar.—*The Indian Mirror*, December 1504.

This is another work of the same useful character and with the same attractive exterior from the same pen. The subject-matter of this book appeared in the form of a series of articles in the *Calcutta Weekly Notes*. Mr. Roy has here again striven to furnish the busy practitioner with "handy work of easy reference" on an important branch of the criminal law and procedure, and to "consolidate and condense the law authorities within as small a compass as possible compatible with clearness and exactness." Mr. Roy has evidently taken great pains to digest the case-law bearing upon the relevant section of the Code of the Criminal Procedure, and under appropriate headings a large amount of information has been collected. ...We have no doubt practising lawyers will find Mr. Roy's compilation both useful and handy.—*The Allahabad Law Journal*, Vol. II. p. 68, February 16, 1905.

Sanction to prosecute figures so largely in the criminal litigation in this country that a book treating of the law on the subject in a convenient handy manual will, we think, be particularly welcome. The learned author after trying his 'prentice hand' on the Law of Confession has usefully directed his labours to a still more important theme. In this little hand-book, he has brought together all the rulings upon the

subject and has also set out the full texts of various sections, bearing upon the subject of sanction, of the Criminal Procedure Code as amended by Act V of 1898 together with the corresponding sections of the previous Codes, in order to facilitate easy reference and comparative study. We unhesitatingly recommend this book to the profession.—*The Bombay Law Reporter*, Vol VII, p. 239, October 15, 1905.